



भारत का राजपत्र

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सं. 22]

नई दिल्ली, शनिवार, मई 31, 2003/ज्येष्ठ 10, 1925

No. 22]

NEW DELHI, SATURDAY, MAY 31, 2003/JYAISTA 10, 1925

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए साधिकारिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

मंत्रिमंडल सचिवालय

नई दिल्ली, 14 मई, 2003

का. आ. 1536.—केन्द्रीय सरकार, एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए श्री एस. एस. गांधी, वरिष्ठ अधिवक्ता, दिल्ली उच्च न्यायालय, दिल्ली को विशेष न्यायिक मजिस्ट्रेट, रायबरेली के न्यायालय में मामला सं. 198/92-सीबीआई मामला सं. आरसी-1(एस)/93/एसआईसी-IV/नई दिल्ली (अयोध्या मामला) में अपीलों, पुनरीक्षणों और किसी अन्य न्यायालय में अपीलों, पुनरीक्षणों और किसी न्यायालय में उनसे संबंधित अथवा आनुषंगिक किसी अन्य विषय का संचालन करने के लिए विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[सं. 225/7/2003-डी.एस.पी.ई.]

शुभा ठाकुर, अवर सचिव

CABINET SECRETARIAT

New Delhi, the 14th May, 2003

S.O. 1536.—In exercise of the powers conferred by Sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government

1381 GI/2003

(389)

hereby appoints Shri S. S. Gandhi, Senior Advocate, Delhi High Court/Delhi as Special Public Prosecutor for conducting case crime No. 198/92—CBI Case No. RC-1(S)/93/SIC-IV/New Delhi-(Ayodhya Case) in the Court of Special Magistrate at Rae Bareli and appeals, revisions in the appellate or revisional Court and any other matter concerned therewith or incidental thereto in any other Court.

[No. 225/7/2003-DSPE]

SHUBHA THAKUR, Under Secy.

नई दिल्ली, 19 मई, 2003

का. आ. 1537.—केन्द्रीय सरकार, दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मामला संख्या (1) आर. सी. 1(ए)/94-ए० सी० य०-11 (सी० सी० नं० 02/सी०/97), (2) आर० सी० 1(ए)/94-ए० सी० य०-11 (सी० सी० नं० 03/सी०/97), (3) आर० सी० 2(ए)/94-ए० सी० य०-11 (सी० सी० नं० 01/सी०/96), (4) आर० सी० 4 (ए)/94-ए० सी० य०-11 (सी० सी० नं० 04/सी०/97), (5) आर० सी० 5(ए)/94-ए० सी० य०-11 (सी० सी० नं० 01/सी०/97) और इससे जुड़े अथवा अन्य आनुषंगिक मामलों के अभियोजन और अन्य कार्यवाहियों के विशेष न्यायाधीश, गुवाहाटी की अदालत में

मंत्रालय करने के लिए श्री डी. के. दास, अधिवक्ता, गुवाहाटी को विशेष लोक अभियोजक नियुक्त करती है।

[सं. 225/32/2002-डी.एस.पी.ई.]

शुभा ठाकुर, अवर सचिव

New Delhi, the 19th May, 2003

S.O. 1537.—In exercise of the powers conferred by Sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri D. K. Das, Advocate, Guwahati as Special Public Prosecutor to conduct the prosecution and other proceedings in Case No. (1) RC-1(A)/94-ACU-II (CC No. 02(C)/97), (2) RC-1(A)/94-ACU-II (CC No. 03(C)/97), (3) RC-2(A)/94-ACU-II (CC No. 01(C)/96), (4) RC-4(A)/94-ACU-II (CC No. 04(C)/97), (5) RC-5(A)/94-ACU-II (CC No. 01(C)/97) in the court of Special Judge, Guwahati and any other matter connected therewith or incidental thereto.

[No. 225/32/2002-DSPE]

SHUBHA THAKUR, Under Secy.

वित्त एवं कम्पनी कार्य मंत्रालय

(राजस्व विभाग)

केन्द्रीय प्रत्यक्ष कर बोर्ड

नई दिल्ली, 20 फरवरी, 2003

(आयकर)

का. आ. 1538.—सामान्य जानकारी के लिए यह अधिसूचित किया जाता है कि कन्द्र सरकार अधोलिखित संगठन को उनके नाम के सामने उल्लिखित अवधि के लिए आयकर नियमावली, 1962 के नियम 6 के साथ परित आयकर अधिनियम, 1961 की धारा 35 की उपधारा (1) के छंड (ii) के प्रयोजनार्थ “संस्था” श्रेणी के अन्तर्गत निम्नलिखित शर्तों के अधीन अनुमोदित करती है :—

- (i) अधिसूचित संस्था अपने अनुसंधान कार्यकलापों के लिए अलग लेखा वाहियों का रख-रखाव करेगा;
- (ii) अधिसूचित संस्था प्रत्येक वित्तीय वर्ष के लिए अपनी वैज्ञानिक अनुसंधान गतिविधियों की वार्षिक रिपोर्ट प्रत्येक 31 मई को अथवा उससे पहले सचिव, वैज्ञानिक और औद्योगिक अनुसंधान विभाग “टैक्नोलॉजी भवन” न्यू महरौली रोड, नई दिल्ली-110016 को प्रस्तुत करेगा;
- (iii) अधिसूचित संस्था केन्द्र सरकार की तरफ से नामोदिष्ट निर्धारण अधिकारी को आयकर की विवरणी प्रस्तुत करने के अतिरिक्त अपने लेखा परीक्षित वार्षिक लेखों की एक प्रति तथा अपने अनुसंधान कार्यकलापों जिसके लिए आयकर अधिनियम, 1961 की धारा 35 की उपधारा (1) के अन्तर्गत छंट प्रदान की गई थी, के संबंध में आय एवं व्यय खाते की लेखा परीक्षा की भी एक प्रति संस्था पर अधिकार क्षेत्र वाले (क) आयकर महानिदेशक (छंट), 10 मिडलटन रो, पांचवा तल, कलकत्ता-700071 (ख) सचिव, वैज्ञानिक

एवं औद्योगिक अनुसंधान विभाग तथा (ग) आयकर आयुक्त/आयकर निदेशक (छंट) को प्रत्येक वर्ष 31 अक्टूबर को अथवा उससे पहले प्रस्तुत करेगा।

| क्रम सं. | अनुमोदित संगठन का नाम | अवधि जिसके लिए अधिसूचना प्रभावी है |
|----------|--|------------------------------------|
| 1. | श्री औरोबिन्दो सोसाइटी, सोसाइटी हाऊस, पांडिचेरी-605001 | 1-4-2002 से 31-3-2005 |

टिप्पणी : अधिसूचित संस्था को सलाह दी जाती है कि वे अनुमोदन के नवीकरण के लिए तीन प्रतियों में और पहले ही अधिकार क्षेत्र वाले आयकर आयुक्त/आयकर निदेशक (छंट) के माध्यम से केन्द्र सरकार को आवेदन करें। अनुमोदन के नवीकरण के लिए आवेदन पत्र की तीन प्रतियां सचिव, वैज्ञानिक और औद्योगिक अनुसंधान विभाग को सीधे भेजी जाएंगी।

[अधिसूचना संख्या 35/2003/फा.सं. 203/5/2003-आयकर नि-II]

संगीता गुप्ता, निदेशक (आयकर नि-II)

MINISTRY OF FINANCE AND COMPANY AFFAIRS

(Department of Revenue)

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 20th February, 2003

(INCOME TAX)

S. O. 1538.—It is hereby notified for general information that the organisations mentioned below have been approved by the Central Government for the period mentioned against their names, for the purpose of clause (iii) of Sub-section (1) of Section 35 of the Income Tax Act, 1961, read with Rule 6 of the Income-tax Rules, 1962 under the category “Institution” subject to the following conditions :—

- (i) The notified Institution shall maintain separate books of account for its research activities;
- (ii) The notified Institution shall furnish the Annual Return of its scientific research activities to the Secretary, Department of Scientific and Industrial Research, “Technology Bhawan”, New Mehrauli Road, New Delhi-110016 for every financial year on or before 31st May of each year;
- (iii) The notified Institution shall submit, on behalf of the Central Government, to (a) the Director General of Income Tax (Exemptions), 10 Middleton Row, 5th Floor, Calcutta-700071 (b) The Secretary, Department of Scientific and Industrial Research, and (c) the Commissioner of Income Tax/Director of Income Tax (Exemptions), having jurisdiction over the organisation, on or before the 31st October each year, a copy of its audited Annual Accounts and also a copy of audited Income and

Expenditure Account in respect of its research activities for which exemption was granted under sub-section (1) of Section 35 of Income Tax Act, 1961 in addition to the return of income tax to the designated assessing officer.

| S. No. | Name of the organisation approved | Period for which Notification is effective |
|--------|---|--|
| 1. | Sri Aurobindo Society, Society House, Pondicherry-605 001 | 1-4-2002 to 31-3-2005 |

NOTE: The notified Institution is advised to apply in triplicates and well in advance for renewal of the approval to the Central Government through the Commissioner of Income Tax/Director of Income Tax (Exemptions) having jurisdiction. Three copies of application for renewal of approval shall also be sent directly to the Secretary, Department of Scientific and Industrial Research.

[Notification No. 35/2003/F.No. 203/5/2003-ITA-II]

SANGEETA GUPTA, Director (ITA-II)

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 8 मई, 2003

का. आ. 1539.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध)
स्कोम, 1970 के खंड 3 के उपखण्ड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970 की धारा 9 की उपधारा (3) के खंड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा निम्नलिखित सारणी के कालम (2) में उल्लिखित व्यक्तियों को उक्त सारणी के कालम (3) में उल्लिखित व्यक्तियों के स्थान पर कालम (1) में उल्लिखित राष्ट्रीयकृत बैंकों के निदेशक के रूप में तत्काल प्रभाव से अगले आदेश तक के लिए नामित करती है।

सारणी

| बैंक का नाम | प्रस्तावित व्यक्ति का नाम | विद्यमान निदेशकों का नाम |
|---------------------|--|---|
| 1 | 2 | 3 |
| केनरा बैंक | श्रीमति देवकी मुश्कुण्ण, | श्री एम० कै० भट्टाचार्य सी० जी० एम० निरीक्षण विभाग, भारतीय रिजर्व बैंक, मुम्बई। |
| बैंक अँफ महाराष्ट्र | श्रीमति फुलन कुमार, प्रधानाचार्य, कृष्ण बैंकिंग महाविद्यालय, भारतीय रिजर्व बैंक, पुणे। | श्री ही० पी० एस० राठौर, क्षेत्रीय निदेशक, भारतीय रिजर्व बैंक, चंडीगढ़। |

[सं. एफ. 9/9/2003-बीओ-1]

रमेश चन्द्र, अवर सचिव

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 8th May, 2003

S. O. 1539.—In exercise of the powers conferred by clause (c) of Sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, read with sub-clause (1) of clause 3 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government, hereby nominates the persons specified in column (2) of the Table below as Directors of the Nationalised Banks specified in column (1) thereof in place of the persons specified in column (3) of the said Table, with immediate effect and until further orders:—

TABLE

| Name of the bank | Name of person proposed | Name of the existing directors |
|---------------------|---|---|
| 1 | 2 | 3 |
| Canara Bank | Smt. Devki Muthukrishnān, Regional Director, RBI, Bangalore | Shri M. K. Bhattacharya, CGM, Inspection Department, RBI, Mumbai. |
| Bank of Maharashtra | Smt. Phulan Kumar, Principal, College of Agricultural Banking, RBI, Pune. | Shri D.P.S. Rathore, Regional Director, RBI, Chandigarh. |

[F.No. 9/9/2003-B.O.-I]

RAMESH CHAND, Under Secy.

(राजस्व विभाग)

केन्द्रीय प्रत्यक्ष कर बोर्ड

नई दिल्ली, 9 मई 2003

(आयकर)

का. आ. 1540.—सामान्य जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार अधोलिखित संगठन को उसके नाम के सामने उल्लिखित अवधि के लिए आयकर नियमावली, 1962 के नियम 6 के साथ पठित आयकर अधिनियम, 1961 की धारा 35 की उपधारा (1) के खंड (ii) के प्रयोजनार्थ “संघ” श्रेणी के अन्तर्गत निम्नलिखित शर्तों के अधीन अनुमोदित करती है:—

- अधिसूचित संघ अपने अनुसंधान कार्यकलापों के लिए अलग लेखा बहियों का रख-रखाव करेगा;
- अधिसूचित संघ प्रत्येक वित्तीय वर्ष के लिए अपनी वैज्ञानिक अनुसंधान गतिविधियों की वार्षिक रिटर्न प्रत्येक 31 मई को अथवा उससे पहले सचिव, वैज्ञानिक और औद्योगिक अनुसंधान विभाग “टैकोलाजी भवन” न्यू महरीली गोड़, नई दिल्ली-110016 को प्रस्तुत करेगा;
- अधिसूचित संघ केन्द्र सरकार की तरफ से नामोदर्दाता निर्धारण अधिकारी को आयकर की विवरणी प्रस्तुत करने के अतिरिक्त अपने लेखा परीक्षित वार्षिक लेखों की एक प्रति तथा अपने अनुसंधान कार्यकलापों जिसके लिए आयकर अधिनियम, 1961 की धारा 35 की उपधारा (1) के अन्तर्गत

छूट प्रदान की गई थी, के संबंध में आय एवं व्यय खाते की लेखा परीक्षा की भी एक प्रति संस्था पर अधिकार क्षेत्र वाले (क) आयकर महानिदेशक (छूट), 10 मिडलटन रो, पांचवां तल, कोलकाता-700071 (ख) सचिव, वैज्ञानिक एवं औद्योगिक अनुसंधान विभाग तथा (ग) आयकर आयुक्त/आयकर निदेशक (छूट) को प्रत्येक वर्ष 31 अक्टूबर को अथवा उससे पहले प्रस्तुत करेगा।

| क्रम सं. | अनुमोदित संगठन का नाम | अवधि जिसके लिए अधिसूचना प्रभावी है |
|----------|--|------------------------------------|
| 1. | मैसर्स सेंटर फार अर्थ साइंस स्टडीज, अवकुलम थुरुविक्कल, पी. ओ. त्रिवेन्द्रम-695031, केरल। | 1-4-2001 से 31-3-2004 |

टिप्पणी : अधिसूचित संघ को सलाह दी जाती है कि वे अनुमोदन के नवीकरण के लिए तीन प्रतियों में और पहले ही अधिकार क्षेत्र वाले आयकर आयुक्त/आयकर निदेशक (छूट) के माध्यम से केन्द्र सरकार को आवेदन करें। अनुमोदन के नवीकरण के लिए आवेदन पत्र की तीन प्रतियां सचिव, वैज्ञानिक और औद्योगिक अनुसंधान विभाग को साथे भेजी जाएंगी।

[अधिसूचना संख्या 127/2003/फा.सं. 203/100/2002-आयकर नि-II]

संगीता गुप्ता, निदेशक (आयकर नि-II)

(Department of Revenue)

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 9th May, 2003

(Income-Tax)

S. O. 1540.—It is hereby notified for general information that the organisation mentioned below has been approved by the Central Government for the period mentioned against the names, for the purpose of clause (ii) of sub-section (1) of Section 35 of the Income Tax Act, 1961, read with Rule 6 of the Income tax Rules, 1962 under the category "Association" subject to the following conditions :—

- (i) The notified Association shall maintain separate books of accounts for its research activities;
- (ii) The notified Association shall furnish the Annual Return of its scientific research activities to the Secretary, Department of Scientific and Industrial Research, "Technology Bhawan", New Mehrauli Road, New Delhi-110016 for every financial year on or before 31st May of each year;

(iii) The notified Association shall submit, on behalf of the Central Government, to (a) the Director General of Income Tax (Exemptions), 10 Middleton Row, 5th Floor, Kolkatta-700071 (b) the Secretary, Department of Scientific and Industrial Research, and (c) the Commissioner of Income Tax/Director of Income Tax (Exemptions), having jurisdiction over the organisation, on or before the 31st October each year, a copy of its audited Annual Accounts and also a copy of audited Income and Expenditure Account in respect of its research activities for which exemption was granted under sub-section (1) of Section 35 of Income Tax Act, 1961 in addition to the return of income tax to the designated assessing officer.

| S. No. | Name of the organisation approved | Period for which Notification is effective |
|--------|---|--|
| 1. | M/s. Centre for Earth Sciences Studies, Akkulam, Thuruvikkal P.O., Trivandrum-695031, Kerala. | 1-4-2001 to 31-3-2004 |

Note : The notified Association is advised to apply in triplicates and well in advance for renewal of the approval to the Central Government through the Commissioner of Income Tax/Director of Income Tax (Exemptions) having jurisdiction. Three copies of application for renewal of approval shall also be sent directly to the Secretary, Department of Scientific and Industrial Research.

[Notification No. 127/2003/F.No. 203/100/2002-ITA-II]

SANGEETA GUPTA, Director (ITA-II)

आदेश

नई दिल्ली, 12 मई, 2003

स्टाम्प

का. आ. 1541.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा दामोदर घाटी निगम, कोलकाता को मात्र सत्तानवे लाख पचास हजार रुपए का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है, जो उक्त निगम द्वारा जारी किए जाने वाले मात्र एक सौ तीस करोड़ रुपये के समग्र मूल्य के ऋणपत्रों के स्वरूप वाले 13000 अपरिवर्तनीय गैर-संचयी कराधेर सुरक्षित विमोच्य ऋणपत्रों (12वीं श्रृंखला) पर स्टाम्प शुल्क के कारण प्रभार्य है।

[सं. 21/2003-स्टाम्प/फा, सं. 33/20/2003-बि.क्स.]

आर. जी. छाबड़ा, अवर सचिव

ORDER

New Delhi, the 12th May, 2003

STAMPS

S. O. 1541.—In exercise of the powers conferred by clause (b) of sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits Damodar Valley Corporation, Kolkata to pay consolidated stamp duty of rupees ninety seven lakh fifty thousand only chargeable on account of the stamp duty on 13000 non-convertible non-cumulative taxable secured redeemable bonds (12 Series) in the nature of Debentures aggregating to rupees one hundred thirty crore only, to be issued by the said corporation.

[No. 21/2003-STAMP/F. No. 33/20/2003-ST]

R. G. CHHABRA, Under Secy.

नई दिल्ली, 13 मई, 2003

का. आ. 1542.—सर्वसाधारण की जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार आयकर नियमावली, 1962 के नियम 2ड़ के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23-छ) के प्रयोगनार्थ कर निर्धारण वर्ष 2002-2003, 2003-2004 और 2004-2005 के लिए नीचे ऐसा (3) में उल्लिखित उद्यम को अनुमोदित करती है।

2. यह अनुमोदन इस शर्त के अधीन है कि :

- (i) उद्यम/औद्योगिक उपक्रम आयकर नियमावली, 1962 के नियम 2ड़ के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23-छ) के उपबंधों के अनुरूप होगा और उनका अनुपालन करेगा,
- (ii) केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि उद्यम/औद्योगिक उपक्रम :—
 - (क) अवसंरचनात्मक सुविधा को जारी रखना बंद कर देता है, और
 - (ख) खाता-बहियों का रख-रखाव नहीं करता है तथा आयकर नियमावली, 1962 के नियम 2ड़ के उप नियम (7) द्वारा यथा अपेक्षित किसी लेखाकार द्वारा ऐसे खातों की लेखा परीक्षा नहीं करता है, अथवा
 - (ग) आयकर नियमावली, 1962 के नियम 2ड़ के उप नियम (7) द्वारा यथा अपेक्षित लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करता है।

3. अनुमोदित उद्यम है :—

मैसर्स नर्मदा इन्फ्रास्ट्रक्चर कंस्ट्रक्शन इन्टरप्राइज लि., माऊण्ट पूनमैली रोड, मनपाक्कम, पो.ओ. बाक्स 979, चेन्नई-600089 द्वारा अपनी योजना हेतु भारत सरकार और गुजरात सरकार के साथ लारसन एंड ट्रब्रो लिमिटेड सहित हस्ताक्षरित रियायती करार के अनुसार द्वितीय नर्मदा ब्रिज का निर्माण करना, अनुरक्षण एवं संचालित करने तथा विद्यमान ब्रिज को हस्तांतरित करना। (फा. सं. 205/103/1999-आयकर नि.-II)

[अधिसूचना सं. 128/2003/फा. सं. 205/103/1999-आयकर नि.-II]

संगीता गुप्ता, निदेशक (आयकर नि.-II)

New Delhi, the 13th May, 2003

S.O. 1542.—It is notified for general information that enterprise, listed at para (3) below has been approved by the Central Government for the purpose of Section 10(23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962, for the assessment years 2002-2003, 2003-2004 and 2004-2005.

2. The approval is subject to the condition that—

- (i) the enterprise/industrial undertaking will conform to and comply with the provisions of section 10(23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962;
- (ii) the Central Government shall withdraw this approval if the enterprise/industrial undertaking :—
 - (a) ceases to carry on infrastructure facility; or
 - (b) fails to maintain books of account and get such accounts audited by an accountant as required by sub-rule (7) of rule 2E of the Income-tax Rules, 1962; or
 - (c) fails to furnish the audit report as required by sub-rule (7) of rule 2E of the Income-tax Rules, 1962.

3. The enterprise approved is—M/s Narmada Infrastructure Construction Enterprise Ltd., Mount Poonamallee Road, Manapakkam, P.O. Box 979, Chennai 600089 for their project to build, maintain and operate the 2nd Narmada bridge and transfer existing bridge as per Concession Agreement signed along with the Larson & Tubro Ltd. with Govt. of India and Govt. of Gujarat (F. No. 205/103/99/ITA. II).

[Notification No. 128/2003/F. No. 205/103/99/ITA-II]

SANGEETA GUPTA, Director (ITA. II)

नई दिल्ली, 13 मई, 2003

का. आ. 1543.—सर्वसाधारण की जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार आयकर नियमावली, 1962 के नियम 2डे के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23-(ळ)) के प्रयोजनार्थ कर निर्धारण वर्ष 2002-2003, 2003-2004 और 2004-2005 के लिए नीचे पैरा (3) में उल्लिखित उद्यमों/औद्योगिक उपक्रम को अनुमोदित करती है।

2. यह अनुमोदन इस शर्त के अधीन है कि :—

- (i) उद्यम/औद्योगिक उपक्रम आयकर नियमावली, 1962 के नियम 2डे के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23ळ) के उपबंधों के अनुरूप होगा और उनका अनुपालन करेगा,
- (ii) केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि उद्यम/औद्योगिक उपक्रम ;—
 - (क) अवसंरचनात्मक सुविधा को जारी रखना बंद कर देता है, और
 - (ख) याता व्यक्तियों का रख-रखाव नहीं करता है तथा आयकर नियमावली, 1962 के नियम 2डे के उप नियम (7) द्वारा यथा अपेक्षित किसी लेखाकार द्वारा ऐसे खातों की लेखा परीक्षा नहीं करता है, अथवा
 - (ग) आयकर नियमावली, 1962 के नियम 2डे के उप नियम (7) द्वारा यथा अपेक्षित लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करता है।

3. अनुमानित उद्यम/औद्योगिक उपक्रम है :—

मेंगर्स एन्सी, पी.एल. कोजनेरेशन लिमिटेड, 3बी शेक्सपियर मार्गणी, कलकत्ता-700071 को हल्दिया पश्चिम बंगाल स्थित 116 मेंगावाट कम्बाइंड साईकिल कोजनेरेशन पावर स्टांट की उनकी पारियोजना के लिए। (फा. सं. 205/143/1999-आयकर नि.-II)

[अधिकृत नं. 129/2003/फा. सं. 205/143/1999-आयकर नि.-II]

संगीता गुप्ता, निदेशक (आयकर नि.-II)

New Delhi, the 13th May, 2003

S.O. 1543.—It is notified for general information that enterprise/industrial undertaking listed at para (3) below has been approved by the Central Government for the purpose of Section 10(23G) of the Income-tax Act, 1961, read with rule 21E of the Income-tax Rules, 1962, for the assessment years 2002-2003, 2003-2004 and 2004-2005.

2. The approval is subject to the condition that :—

- (i) the enterprise/industrial undertaking will conform to and comply with the provisions of Section 10(23G) of the Income-tax Act, 1961, read with rule 21E of the Income-tax Rules, 1962;

(ii) the Central Government shall withdraw this approval if the enterprise/industrial undertaking :—

- (a) ceases to carry on infrastructure facility; or
- (b) fails to maintain books of account and get such accounts audited by an accountant as required by sub-rule (7) of rule 2E of the Income-tax Rules, 1962; or
- (c) fails to furnish the audit report as required by sub-rule (7) of rule 2E of the Income-tax Rules, 1962.

3. The enterprise/industrial undertaking approved is M/s HPL Cogeneration Limited, 3B Shakespeare Sarani, Calcutta-700071 for their project of 116 MW Combined Cycle Cogeneration Power Plant at Haldia, West Bengal (F. No. 205/143/1999/ITA-II).

[Notification No. 129/2003/F. No. 205/143/1999 ITAII]

SANGEETA GUPTA, Director (ITA. II)

आदेश

नई दिल्ली, 14 मई, 2003

स्टाम्प

का. आ. 1544.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा बैंक ऑफ बड़ौदा, मुम्बई को मात्र चार करोड़ पचास लाख रुपए का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है, जो उक्त बैंक द्वारा जारी किए जाने वाले मात्र छह सौ करोड़ रुपये के समग्र मूल्य के ऋणपत्रों के स्वरूप वाले असुरक्षित अपरिवर्तनीय विमोच्य अधीनस्थ बैंक ऑफ बड़ौदा ऋणपत्रों श्रृंखला-III पर स्टाम्प शुल्क के कारण प्रभार्य है।

[सं. 22/2003-स्टाम्प/फा. सं. 33/19/2003-बि.क.]

आर. जी. छाबड़ा, अवर सचिव

ORDER

New Delhi, the 14th May, 2003

STAMPS

S. O. 1544.—In exercise of the powers conferred by clause (b) of sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits Bank of Baroda, Mumbai to pay consolidated stamp duty of rupees four crore fifty lakh only chargeable on account of the stamp duty on Unsecured Non-convertible Redeemable Subordinated Bank of Baroda Bonds Series-III in the nature of Debentures aggregating to rupees six hundred crore only, to be issued by the said Bank.

[No. 22/2003-STAMP/F. No. 33/19/2003-ST]

R. G. CHHABRA, Under Secy.

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 14 मई, 2003

का. आ. 1545.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकोर्ण उपबंध) स्कीम, 1970 के खण्ड 3 के उपखण्ड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा (3) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा वित्त मंत्रालय, आर्थिक कार्य विभाग (बैंकिंग प्रभाग), नई दिल्ली में निदेशक श्री आलोक भट्टनागर को तत्काल प्रभाव से और आगामी आदेशों तक युनाइटेड बैंक आफ इंडिया के निदेशक मण्डल में निदेशक नामित करती है।

[फा. सं. 9/3/2002-बी.ओ-1]

रमेश चन्द, अवर सचिव

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 14th May, 2003

S.O. 1545.—In exercise of the powers conferred by clause (b) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 read with sub-clause (1) of clause 3 of the Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government, hereby nominates Shri Alok Bhatnagar, Director, Ministry of Finance, Department of Economic Affairs (Banking Division), New Delhi as a Director on the Board of Directors of United Bank of India with immediate effect and until further orders.

[F. No. 9/3/2002-B.O-I]

RAMESH CHAND, Under Secy.

शुद्धि पत्र

नई दिल्ली, 19 मई, 2003

का.आ. 1546.—भारत के राजपत्र के भाग II, खण्ड 3(ii) में प्रकाशित दिनांक 21 मार्च, 2003 की अधिसूचना सं. 13/5/2003-बीओए (i) में निम्नलिखित संशोधन किया जाता है :

के लिएधारा 42 की उपधारा (i)
(प्रथम पंक्ति)पढ़ेंधारा 42 की उपधारा (1)
(प्रथम पंक्ति)

[फा. सं. 13/5/2003-बीओए (i)]

डी. चौधरी, अवर सचिव

CORRIGENDUM

New Delhi, the 19th May, 2003

S.O. 1546.—In the notification F. No. 13/5/2003-BOA (i) dated 21st March, 2003, published in Part II, Section 3(ii) of the Gazette of India the following correction is made :

ForSub-section (i) of Section 42
(second line)ReadSub-section (1) of Section 42
(second line)

[F. No. 13/5/2003-BOA (i)]

D. CHOUDHURY, Under Secy.

शुद्धि पत्र

नई दिल्ली, 19 मई, 2003

का.आ. 1547.—भारत के राजपत्र के भाग II, खण्ड 3(ii) में प्रकाशित दिनांक 21 मार्च, 2003 की अधिसूचना सं. 13/5/2003-बीओए (iv) में निम्नलिखित संशोधन किया जाता है :

के लिएधारा 42 की उपधारा (i)
(प्रथम पंक्ति)पढ़ेंधारा 42 की उपधारा (1)
(प्रथम पंक्ति)

[फा. सं. 13/5/2003-बीओए (iv)]

डी. चौधरी, अवर सचिव

CORRIGENDUM

New Delhi, the 19th May, 2003

S.O. 1547.—In the notification F. No. 13/5/2003-BOA(iv) dated 21st March, 2003, published in Part II, Section 3(ii) of the Gazette of India the following correction is made :

| <u>For</u> | <u>Read</u> |
|--|---|
| Sub-section (i) of Section 42 (second line) | Sub-section (1) of Section 42 (second line) [F. No. 13/5/2003-BOA(iv)] D. CHOUDHURY, Under Secy. |

शुद्धि पत्र

नई दिल्ली, 19 मई, 2003

का.आ. 1548.—भारत के राजपत्र के भाग II, खण्ड 3(ii) में प्रकाशित दिनांक 21 मार्च, 2003 की अधिसूचना सं. 13/5/2003-बीओए (vii) में निम्नलिखित संशोधन किया जाता है :

| <u>के लिए</u> | <u>पढ़ें</u> |
|---|--|
| धारा 42 की उपधारा (i) (प्रथम पंक्ति) | धारा 42 की उपधारा (1) (प्रथम पंक्ति) |
| बैंक आफ अमेरिका सिक्यूरिटीज | बैंक आफ अमेरिका सिक्यूरिटीज (इंडिया) प्रा. लि. |
| | [फा. सं. 13/5/2003-बीओए(vii)] डी. चौधरी, अवर सचिव |

CORRIGENDUM

New Delhi, the 19th May, 2003

S. O. 1548.—In the notification F. No. 13/5/2003-BOA (vii) dated 21st March, 2003, published in Part II, Section 3(ii) of the Gazette of India the following corrections are made :

| <u>For</u> | <u>Read</u> |
|--|---|
| Sub-section (i) of Section 42 (second line) | Sub-section (1) of Section 42 (second line) |
| Banc of America Securities | Banc of America Securities (India) Pvt. Ltd. [F. No. 13/5/2003-BOA (vii)] D. CHOUDHURY, Under Secy. |

शुद्धि पत्र

नई दिल्ली, 19 मई, 2003

का.आ. 1549.—भारत के राजपत्र के भाग II, खण्ड 3(ii) में प्रकाशित दिनांक 21 मार्च, 2003 की अधिसूचना सं. 13/5/2003-बीओए (viii) में निम्नलिखित संशोधन किया जाता है :

| <u>के लिए</u> | <u>पढ़ें</u> |
|-----------------------------|---|
| बैंक आफ अमेरिका सिक्यूरिटीज | बैंक आफ अमेरिका सिक्यूरिटीज (इंडिया) प्रा. लि. |

[फा. सं. 13/5/2003-बीओए (viii)]

डी. चौधरी, अवर सचिव

CORRIGENDUM

New Delhi, the 19th May, 2003

S. O. 1549.—In the notification F. No. 13/5/2003-BOA (viii) dated 21st March, 2003, published in Part II, Section 3(ii) of the Gazette of India the following correction is made :

| <u>For</u> | <u>Read</u> |
|----------------------------|--|
| Banc of America Securities | Banc of America Securities (India) Pvt. Ltd. [F. No. 13/5/2003-BOA (viii)] D. CHOUDHURY, Under Secy. |

शुद्धि पत्र

नई दिल्ली, 19 मई, 2003

का.आ. 1550.—भारत के राजपत्र के भाग II, खण्ड 3(ii) में प्रकाशित दिनांक 21 मार्च, 2003 की अधिसूचना सं. 13/5/2003-बीओए (ix) में निम्नलिखित संशोधन किया जाता है :

के लिए

बैंक आफ अमेरिका सिक्यूरिटीज

पढ़ेंबैंक आफ अमेरिका सिक्यूरिटीज
(इंडिया) प्रा. लि.

[फा. सं. 13/5/2003-बीओए(ix)]

डॉ. चौधरी, अवर सचिव

CORRIGENDUM

New Delhi, the 19th May, 2003

S.O. 1550.—In the notification F. No. 13/5/2003-BOA (ix) dated 21st March, 2003, published in Part II, Section 3(ii) of the Gazette of India the following correction is made :

For

Banc of America Securities

Read

Banc of America Securities (India) Pvt. Ltd.

[F. No. 13/5/2003-BOA (ix)]

D. CHOUDHURY, Under Secy.

शुद्धि पत्र

नई दिल्ली, 19 मई, 2003

का.आ. 1551.—भारत के राजपत्र के भाग II, खण्ड 3(ii) में प्रकाशित दिनांक 21 मार्च, 2003 की अधिसूचना सं. 13/5/2003-बीओए (x) में निम्नलिखित संशोधन किया जाता है :

के लिएधारा 42 की उपधारा (i)
(प्रथम पंक्ति)पढ़ेंधारा 42 की उपधारा (1)
(प्रथम पंक्ति)

[फा. सं. 13/5/2003-बीओए(x)]

डॉ. चौधरी, अवर सचिव

CORRIGENDUM

New Delhi, the 19th May, 2003

S.O. 1551.—In the notification F. No. 13/5/2003-BOA (x) dated 21st March, 2003, published in Part II, Section 3(ii) of the Gazette of India the following correction is made :

ForSub-section (i) of Section 42
(second line)ReadSub-section (1) of Section 42
(second line)

[F. No. 13/5/2003-BOA (x)]

D. CHOUDHURY, Under Secy.

वस्त्र मंत्रालय

नई दिल्ली, 21 मई, 2003

का.आ. 1552.—केन्द्र सरकार एतद्वारा अधिसूचित करती है कि केन्द्रीय रेशम बोर्ड अधिनियम, 1948 की धारा 4 की उपधारा (3) के नियम(ग) के अनुसरण में, राज्य सभा ने श्री इन्द्रमणि बोरा, सदस्य, राज्य सभा का 6 मई, 2003 को अधिनियम के प्रावधानों के अध्यधीन, तीन वर्षों की अवधि के लिए केन्द्रीय रेशम बोर्ड के सदस्य के रूप में कार्य करने के लिए विधिवत् चयन किया है।

138161/03-2

[फा. सं. 25012/04/91-रेशम]

किरन धींगरा, संयुक्त सचिव

MINISTRY OF TEXTILES

New Delhi, the 21st May, 2003

S. O. 1552.—The Central Government hereby notifies that the Rajya Sabha has in pursuance of clause (c) of sub-section (3) of Section 4 of the Central Silk Board Act, 1948 duly elected Shri Indramoni Bora, Member, Rajya Sabha, on 6th May, 2003 to serve as a member of the Central Silk Board for a period of three years subject to the provisions of the Act.

[F. No. 25012/04/91-Silk]

KIRAN DHINGRA, Jt. Secy.

रसायन एवं उर्वरक मंत्रालय

(उर्वरक विभाग)

नई दिल्ली, 20 मई, 2003

का. आ. 1553.—केन्द्रीय सरकार, राजभाषा “संघ के शासकीय प्रयोजनों के लिए प्रयोग” नियम 1976 के नियम 10 के उपनियम (4) के अनुसरण में रसायन एवं उर्वरक मंत्रालय, उर्वरक विभाग के प्रशासनिक नियंत्रण में आने वाले निम्नलिखित कार्यालय, जिनके 80 प्रतिशत से अधिक अर्थात् शंत-प्रतिशत कमचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है :—

1. नेशनल फर्टिलाइजर्स लिमिटेड, क्षेत्रीय विपणन कार्यालय, करनाल, हरियाणा।
2. नेशनल फर्टिलाइजर्स लिमिटेड, क्षेत्रीय विपणन कार्यालय, कुरुक्षेत्र, हरियाणा।
3. नेशनल फर्टिलाइजर्स लिमिटेड, क्षेत्रीय विपणन कार्यालय, हिसार, हरियाणा।
4. नेशनल फर्टिलाइजर्स लिमिटेड, पानीपत (डी एण्ड सी) सैल, हरियाणा।
5. नेशनल फर्टिलाइजर्स लिमिटेड, क्षेत्रीय विपणन कार्यालय, रोहतक, हरियाणा।
6. नेशनल फर्टिलाइजर्स लिमिटेड, क्षेत्रीय विपणन कार्यालय, जालंधर, पंजाब।
7. नेशनल फर्टिलाइजर्स लिमिटेड, क्षेत्रीय विपणन कार्यालय, अमृतसर, पंजाब।
8. नेशनल फर्टिलाइजर्स लिमिटेड, क्षेत्रीय विपणन कार्यालय, लुधियाना, पंजाब।
9. नेशनल फर्टिलाइजर्स लिमिटेड, क्षेत्रीय विपणन कार्यालय, बठिणडा, पंजाब।
10. नेशनल फर्टिलाइजर्स लिमिटेड, क्षेत्रीय विपणन कार्यालय, मोंगा, पंजाब।
11. नेशनल फर्टिलाइजर्स लिमिटेड, क्षेत्रीय विपणन कार्यालय, पटियाला, पंजाब।
12. नेशनल फर्टिलाइजर्स लिमिटेड, बठिणडा (डी एण्ड सी) सैल, पंजाब।
13. नेशनल फर्टिलाइजर्स लिमिटेड, राज्य विपणन कार्यालय, शिमला, हिमाचल प्रदेश।
14. नेशनल फर्टिलाइजर्स लिमिटेड, क्षेत्रीय विपणन कार्यालय, जम्मू, जम्मू एण्ड कश्मीर।
15. नेशनल फर्टिलाइजर्स लिमिटेड, नंगल (डी एण्ड सी) सैल, पंजाब।
16. नेशनल फर्टिलाइजर्स लिमिटेड, राज्य विपणन कार्यालय, जयपुर, राजस्थान।
17. नेशनल फर्टिलाइजर्स लिमिटेड, क्षेत्रीय विपणन कार्यालय, अलवर, राजस्थान।
18. नेशनल फर्टिलाइजर्स लिमिटेड, क्षेत्रीय विपणन कार्यालय, श्री गंगानगर, राजस्थान।
19. नेशनल फर्टिलाइजर्स लिमिटेड, क्षेत्रीय विपणन कार्यालय, कोटा, राजस्थान।

[सं. ई-11011/1/2001-हिन्दी]

बलविन्दर कुमार, संयुक्त सचिव

MINISTRY OF CHEMICAL & FERTILIZERS

(Department of Fertilizers)

New Delhi, the 20th May, 2003

S.O. 1553.—In pursuance of sub-rule (4) of the Rule 10 of the Official Language “Use for official purposes of the Union” Rule 1976 the Central Govt. hereby notifies the following offices, under the Administrative Control of the Ministry of Chemicals & Fertilizers, Department of Fertilizers, more than 80% i.e. 100% staff where of have acquired the working knowledge of Hindi:—

1. National Fertilizers Limited, Regional Marketing Office, Karnal, Haryana.
2. National Fertilizers Limited, Regional Marketing Office, Kurukshetra, Haryana.
3. National Fertilizers Limited, Regional Marketing Office, Hissar, Haryana.
4. National Fertilizers Limited, Panipat (D & C) Cell, Haryana.
5. National Fertilizers Limited, Regional Marketing Office, Rohtak, Haryana.

6. National Fertilizers Limited, Regional Marketing Office, Jalandhar, Punjab.
7. National Fertilizers Limited, Regional Marketing Office, Amritsar, Punjab.
8. National Fertilizers Limited, Regional Marketing Office, Ludhiana, Punjab.
9. National Fertilizers Limited, Regional Marketing Office, Bhatinda, Punjab.
10. National Fertilizers Limited, Regional Marketing Office, Monga, Punjab.
11. National Fertilizers Limited, Regional Marketing Office, Patiala, Punjab.
12. National Fertilizers Limited, Bhatinda (D & C) Cell, Punjab.
13. National Fertilizers Limited, State Marketing Office, Shimla, Himachal Pradesh.
14. National Fertilizers Limited, Regional Marketing Office, Jammu, Jammu & Kashmir.
15. National Fertilizers Limited, Nangal (D & C) Cell, Punjab.
16. National Fertilizers Limited, Jaipur, Rajasthan.
17. National Fertilizers Limited, Regional Marketing Office, Alwar, Rajasthan.
18. National Fertilizers Limited, Regional Marketing Office, Shree Ganganagar, Rajasthan.
19. National Fertilizers Limited, Kota, Rajasthan.

[No. E-11011/I/2001-Hindi]
BALVINDER KUMAR, Jt. Secy.

इस्पात मंत्रालय

नई दिल्ली, 20 मई, 2003

का. आ. 1554.—सरकारी स्थान (अप्राधिकत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा-3 द्वारा प्रदत्त पट के समतुल्य अधिकारी हैं, उक्त अधिनियम के प्रयोजनों के लिए सम्पदा अधिकारी नियुक्त करती है जो अब से उक्त सारणी के स्तम्भ (2) में विनाईटेट सरकारी स्थानों के बारे में अपने अधिकारों की स्थानीय सीमाओं के अन्तर्गत उक्त अधिनियम द्वारा या उसके अधीन सम्पदा अधिकारी को प्रदत्त शक्तियों का पालन करेगा, नामतः

सारणी

अधिकारी का पदनाम तथा पता

सरकारी स्थानों के प्रवर्ग और अधिकारिता की स्थानीय सीमाएं

1

श्री एम. के. झा., प्रबन्धक,
मेकान लिमिटेड, रांची, झारखण्ड-834002

2

रांची, झारखण्ड में मेकान लिमिटेड के अथवा
उसके प्रशासनिक नियंत्रणाधीन सभी स्थान

[मिसिल. सं. 3(8)/2003-एच.एस.एम.]

दीपक अनुराग, निदेशक

MINISTRY OF STEEL

New Delhi, the 20th May, 2003

S. O. 1554.—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971) the Central Government hereby appoints the officer mentioned in column (1) of the table below, officer equivalent to the rank of a gazetted officer of Government, to be estate officer for the purposes of the said Act, who shall exercise the powers conferred, and perform the duties imposed, on estate officers by or under the said Act, within the local limits of his jurisdiction in respect of the public premises specified in column (2) of the said Table, namely:—

TABLE

Address and designation of the Officer

Categories of the Public Premises and local limits of jurisdiction

1

Shri S. K. Jha, Manager,
MECON Limited, Ranchi,
Jharkhand-834002

2

All Premises belonging to and under the administrative control of MECON Limited at Ranchi, Jharkhand

[F. No. 3(8)/2003-I-SM]

I.D.P. VK ANURAG, Editor

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 26 मई, 2003

का. आ. 1555 केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना सं. का. आ. 1149, तारीख 01 अप्रैल, 2002 जो भारत के राजपत्र भाग 2, खंड 3, उपखंड (ii) तारीख 06 अप्रैल, 2002 में पृष्ठ 3352 से 3357 पर प्रकाशित की गई थी में निम्नलिखित संशोधन करती है, अर्थात् :-

उक्त अधिसूचना की अनुसूची में :-

1. पृष्ठ 3353 पर, स्तंभ 2 में गांव "पाण्डेगांव" के सामने, सर्वे नं. "83/2" के सामने स्तंभ सं. 6,7 और 8 में क्षेत्रफल "0-46-80" के स्थान पर, क्षेत्रफल "0-57-90" रखा जाएगा ;
2. पृष्ठ 3353 पर, स्तंभ 2 में गांव "पाण्डेगांव" के सामने, स्तंभ सं. 3 और 4 के सर्वे नं. "82/1ए + 3/1, 82/1ए + 3/2, 82/1बी, 82/2" के सामने स्तंभ सं. 6,7 और 8 में क्षेत्रफल "0-22-00" के स्थान पर, क्षेत्रफल "0-25-20" रखा जाएगा ;
3. पृष्ठ 3353 पर, स्तंभ 2 में गांव "पाण्डेगांव" के सामने, स्तंभ सं. 3 और 4 के सर्वे नं. "92/1, 92/1 + 2/1, 92/1 + 2/2, 92/3, 92/4" के सामने स्तंभ सं. 6,7 और 8 में क्षेत्रफल "0-13-90" के स्थान पर, क्षेत्रफल "0-15-00" रखा जाएगा ;
4. पृष्ठ 3353 पर, स्तंभ 2 में गांव "पाण्डेगांव" के सामने, स्तंभ सं. 3 और 4 के सर्वे नं. "92/2" के सामने स्तंभ सं. 6,7 और 8 में क्षेत्रफल "0-12-30" के स्थान पर, क्षेत्रफल "0-15-70" रखा जाएगा ;
5. पृष्ठ 3353 पर, स्तंभ 2 में गांव "पाण्डेगांव" के सामने, स्तंभ सं. 3 और 4 के सर्वे नं. "98/1+2" के सामने स्तंभ सं. 6,7 और 8 में क्षेत्रफल "0-25-00" के स्थान पर, क्षेत्रफल "0-54-50" रखा जाएगा ;
6. पृष्ठ 3353 पर, स्तंभ 2 में गांव "पाण्डेगांव" के सामने, स्तंभ सं. 3 और 4 के सर्वे नं. "100/1, 100/2क, 100/2ख" के सामने स्तंभ सं. 6,7 और 8 में क्षेत्रफल "0-27-20" के स्थान पर, क्षेत्रफल "0-28-90" रखा जाएगा ;
7. पृष्ठ 3353 पर, स्तंभ 2 में गांव "पाण्डेगांव" के सामने, स्तंभ सं. 3 और 4 के सर्वे नं. "101/1" के सामने स्तंभ सं. 6,7 और 8 में क्षेत्रफल "0-22-10" के स्थान पर, क्षेत्रफल "0-23-30" रखा जाएगा ;
8. पृष्ठ 3353 पर, स्तंभ 2 में गांव "पाण्डेगांव" के सामने, स्तंभ सं. 3 और 4 के सर्वे नं. "16/3, 16/1, 16/2" के सामने स्तंभ सं. 6,7 और 8 में क्षेत्रफल "0-01-40" के स्थान पर, क्षेत्रफल "0-07-50" रखा जाएगा ;

9. पृष्ठ 3354 पर, स्तंभ 2 में गांव "पाण्डेगांव" के सामने, स्तंभ सं. 3 और 4 के सर्वे नं. "15/4" के सामने स्तंभ सं. 6,7 और 8 में क्षेत्रफल "0-19-60" के स्थान पर, क्षेत्रफल "0-27-50" रखा जाएगा ;
10. पृष्ठ 3354 पर, स्तंभ 2 में गांव "पाण्डेगांव" के सामने, स्तंभ सं. 3 और 4 के सर्वे नं. "9/1, 9/2" के सामने स्तंभ सं. 6,7 और 8 में क्षेत्रफल "0-20-80" के स्थान पर, क्षेत्रफल "0-26-40" रखा जाएगा ;
11. पृष्ठ 3354 पर, स्तंभ 2 में गांव "पाण्डेगांव" के सामने, स्तंभ सं. 3 और 4 के सर्वे नं. "7" के सामने स्तंभ सं. 6,7 और 8 में क्षेत्रफल "0-14-50" के स्थान पर, क्षेत्रफल "0-15-60" रखा जाएगा ;
12. पृष्ठ 3354 पर, स्तंभ 2 में गांव "पाण्डेगांव" के सामने, स्तंभ सं. 3 और 4 के सर्वे नं. "6/3" के सामने स्तंभ सं. 6,7 और 8 में क्षेत्रफल "0-13-30" के स्थान पर, क्षेत्रफल "0-17-60" रखा जाएगा ;
13. पृष्ठ 3354 पर, स्तंभ 2 में गांव "पाण्डेगांव" के सामने, स्तंभ सं. 3 और 4 के सर्वे नं. "6/4" के सामने स्तंभ सं. 6,7 और 8 में क्षेत्रफल "0-09-80" के स्थान पर, क्षेत्रफल "0-20-10" रखा जाएगा ;
14. पृष्ठ 3354 पर, स्तंभ 2 में गांव "पाण्डेगांव" के सामने, स्तंभ सं. 3 और 4 के सर्वे नं. "6/5" के सामने स्तंभ सं. 6,7 और 8 में क्षेत्रफल "0-08-20" के स्थान पर, क्षेत्रफल "0-15-00" रखा जाएगा ;
15. पृष्ठ 3354 पर, स्तंभ 2 में गांव "पाण्डेगांव" के सामने, स्तंभ सं. 3 और 4 के सर्वे नं. "6/6" के सामने स्तंभ सं. 6,7 और 8 में क्षेत्रफल "0-09-00" के स्थान पर, क्षेत्रफल "0-09-70" रखा जाएगा ;
16. पृष्ठ 3354 पर, स्तंभ 2 में गांव "खिलेगांव" के सामने, स्तंभ सं. 3 और 4 के सर्वे नं. "145/1ए, 145/2बी, 145/2, 145/1ए" के सामने स्तंभ सं. 6,7 और 8 में क्षेत्रफल "0-15-90" के स्थान पर, क्षेत्रफल "0-17-40" रखा जाएगा ;
17. पृष्ठ 3355 पर, स्तंभ 2 में गांव "खिलेगांव" के सामने, स्तंभ सं. 3 और 4 के सर्वे नं. "147/2, 147/1" के सामने स्तंभ सं. 6,7 और 8 में क्षेत्रफल "0-44-70" के स्थान पर, क्षेत्रफल "0-46-50" रखा जाएगा ;
18. पृष्ठ 3355 पर, स्तंभ 2 में गांव "खिलेगांव" के सामने, स्तंभ सं. 3 और 4 के सर्वे नं. "150/1 + 2 बी, 150/1 + 2ए" के सामने स्तंभ सं. 6,7 और 8 में क्षेत्रफल "0-08-40" के स्थान पर, क्षेत्रफल "0-09-60" रखा जाएगा ;
19. पृष्ठ 3355 पर, स्तंभ 2 में गांव "खिलेगांव" के सामने, स्तंभ सं. 3 और 4 के सर्वे नं. "33/1, 33/2, 33/3, 33/4, 33/5/1, 33/5/2, 33/6, 33/7, 33/8, 33/9/1, 33/9/2, 33/10, 33/11, 33/12, 33/13" के सामने स्तंभ सं. 6,7 और 8 में क्षेत्रफल "0-48-80" के स्थान पर, क्षेत्रफल "0-52-00" रखा जाएगा ;
20. पृष्ठ 3356 पर, स्तंभ 2 में गांव "खिलेगांव" के सामने, स्तंभ सं. 3 और 4 के सर्वे नं. "31/1, 31/2, 31/3, 31/4" के सामने स्तंभ सं. 6,7 और 8 में क्षेत्रफल "0-50-90" के स्थान पर, क्षेत्रफल "0-53-70" रखा जाएगा ;

21. पृष्ठ 3356 पर, स्तंभ 2 में गांव "खिलेगांव" के सामने, स्तंभ सं. 3 और 4 के सर्वे नं. "29/1, 29/2" के सामने स्तंभ सं. 6,7 और 8 में क्षेत्रफल "0-33-60" के स्थान पर, क्षेत्रफल "0-36-60" रखा जाएगा ;
22. पृष्ठ 3356 पर, स्तंभ 2 में गांव "खिलेगांव" के सामने, स्तंभ सं. 3 और 4 के सर्वे नं. "22/1ए, 22/1बी, 22/2" के सामने स्तंभ सं. 6,7 और 8 में क्षेत्रफल "0-08-10" के स्थान पर, क्षेत्रफल "0-10-50" रखा जाएगा ;
23. पृष्ठ 3356 पर, स्तंभ 2 में गांव "खिलेगांव" के सामने, स्तंभ सं. 3 और 4 के सर्वे नं. "60/1, 60/2,60/3" के सामने स्तंभ सं. 6,7 और 8 में क्षेत्रफल "1-62-30" के स्थान पर, क्षेत्रफल "1-64-00" रखा जाएगा ;

[फा. सं. एल.-14014/21/02-जी.पी.]

स्वामी सिंह, निदेशक

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, 26th May, 2003

S.O. 1555 In exercise of the powers conferred by sub-section (I) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Petroleum and Natural Gas, number S. O. 1149 Dated: 01st April, 2002, published at pages 3357 to 3362 in part II, section 3, sub-section (ii) of the Gazette of India, Dated the 06th April, 2002, namely: -

In the Schedule to the said notification: -

1. ~~at~~ page 3358, against village "Pandegaon" in column 2, in Survey No. "83/2" in column 3, 4, for the areas "0-46-80", in column 6, 7, and 8 the areas "0-57-90" shall be substituted;
2. ~~at~~ page 3358, against village "Pandegaon" in column 2, in Survey No. "82/1A+3/1, 82/1A+3/2, 82/1B, 82/2" in column 3, 4, for the areas "0-22-00", in column 6, 7, and 8 the areas "0-25-20" shall be substituted;
3. ~~at~~ page 3358, against village "Pandegaon" in column 2, in Survey No. "92/1, 92/1+2/1, 92/1+2/2, 92/3, 92/4" in column 3, 4, for the areas "0-13-90", in column 6, 7, and 8 the areas "0-15-00" shall be substituted;
4. ~~at~~ page 3358, against village "Pandegaon" in column 2, in Survey No. "92/2" in column 3, 4, for the areas "0-12-30", in column 6, 7, and 8 the areas "0-15-70" shall be substituted;
- 5 ~~at~~ page 3358, against village "Pandegaon" in column 2, in Survey No. "98/1+2" in column 3, 4, for the areas "0-25-00", in column 6, 7, and 8 the areas "0-54-50" shall be substituted;
6. ~~at~~ page 3358, against village "Pandegaon" in column 2, in Survey No. "100/1, 100/2A, 100/2B" in column 3, 4, for the areas "0-27-20", in column 6, 7, and 8 the areas "0-28-90" shall be substituted;

7. **at** page 3358, against village "Pandegaon" in column 2, in Survey No. "101/1" in column 3, 4, for the areas "0-22-10", in column 6, 7, and 8 the areas "0-23-30" shall be substituted;
8. **at** page 3358, against village "Pandegaon" in column 2, in Survey No. "16/3, 16/1, 16/2" in column 3, 4, for the areas "0-01-40", in column 6, 7, and 8 the areas "0-07-50" shall be substituted;
9. **at** page 3359, against village "Pandegaon" in column 2, in Survey No. "15/4" in column 3, 4, for the areas "0-19-60", in column 6, 7, and 8 the areas "0-27-50" shall be substituted;
10. **at** page 3359, against village "Pandegaon" in column 2, in Survey No. "9/1, 9/2" in column 3, 4, for the areas "0-20-80", in column 6, 7, and 8 the areas "0-26-40" shall be substituted;
11. **at** page 3359, against village "Pandegaon" in column 2, in Survey No. "7" in column 3, 4, for the areas "0-14-50", in column 6, 7, and 8 the areas "0-15-60" shall be substituted;
12. **at** page 3359, against village "Pandegaon" in column 2, in Survey No. "6/3" in column 3, 4, for the areas "0-13-30", in column 6, 7, and 8 the areas "0-17-60" shall be substituted;
13. **at** page 3359, against village "Pandegaon" in column 2, in Survey No. "6/4" in column 3, 4, for the areas "0-09-80", in column 6, 7, and 8 the areas "0-20-10" shall be substituted;
14. **at** page 3359, against village "Pandegaon" in column 2, in Survey No. "6/5" in column 3, 4, for the areas "0-08-20", in column 6, 7, and 8 the areas "0-15-00" shall be substituted;
15. **at** page 3359, against village "Pandegaon" in column 2, in Survey No. "6/6" in column 3, 4, for the areas "0-09-00", in column 6, 7, and 8 the areas "0-09-70" shall be substituted;
16. **at** page 3359, against village "Khilegaon" in column 2, in Survey No. "145/1A2; 145/2B, 145/2, 145/1A1" in column 3, 4, for the areas "0-15-90", in column 6, 7, and 8 the areas "0-17-40" shall be substituted;
17. **at** page 3360, against village "Khilegaon" in column 2, in Survey No. "147/2, 147/1" in column 3, 4, for the areas "0-44-70", in column 6, 7, and 8 the areas "0-46-50" shall be substituted;
18. **at** page 3360, against village "Khilegaon" in column 2, in Survey No. "150/1+2B, 150/1+2A" in column 3, 4, for the areas "0-08-40", in column 6, 7, and 8 the areas "0-09-60" shall be substituted;
19. **at** page 3360, against village "Khilegaon" in column 2, in Survey No. "33/1, 33/2, 33/3, 33/4, 33/5/1, 33/5/2, 33/6, 33/7, 33/8, 33/9/1, 33/9/2, 33/10, 33/11, 33/12, 33/13" in column 3, 4, for the areas "0-48-80", in column 6, 7, and 8 the areas "0-52-00" shall be substituted;
20. **at** page 3361, against village "Khilegaon" in column 2, in Survey No. "31/1, 31/2, 31/3, 31/4" in column 3, 4, for the areas "0-50-90", in column 6, 7, and 8 the areas "0-53-70" shall be substituted;

21. at page 3361, against village "Khilegaon" in column 2, in Survey No. "29/1, 29/2" in column 3, 4, for the areas "0-33-60", in column 6, 7, and 8 the areas "0-36-60" shall be substituted;
22. at page 3361, against village "Khilegaon" in column 2, in Survey No. "22/1A, 22/1B, 22/2" in column 3, 4, for the areas "0-08-10", in column 6, 7, and 8 the areas "0-10-50" shall be substituted;
23. at page 3361, against village "Khilegaon" in column 2, in Survey No. "60/1, 60/2, 60/3" in column 3, 4, for the areas "1-62-30", in column 6, 7, and 8 the areas "1-64-00" shall be substituted.

[No. L-14014/21/02-G.P.]
SWAMY SINGH, Director

नई दिल्ली, 26 मई, 2003

का. आ. 1556. - केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि मेसर्स गैस ट्रांसपोर्टेशन एंड इन्फ्रास्ट्रक्चर कम्पनी लिमिटेड की संवर्धक कम्पनी मैसर्स रिलाइंस इंडस्ट्रीज लिमिटेड के गोवा के उत्तरी/दक्षिणी अपतट के खोज ब्लाकों और आन्ध्रप्रदेश में संरचनाओं से कर्नाटक राज्य के बेलगांव जिले में विभिन्न उपभोक्ताओं तक प्राकृतिक गैस के परिवहन के लिए, मेसर्स गैस ट्रांसपोर्टेशन एंड इन्फ्रास्ट्रक्चर कंपनी लिमिटेड द्वारा एक पाइपलाइन बिछाई जानी चाहिए ;

और केन्द्रीय सरकार ने भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मन्त्रालय की अधिसूचना संख्या का. आ. 1149 तारीख 1 अप्रैल, 2002 जो भारत के राजपत्र भाग 2, खंड 3, उपखंड (ii) तारीख 6 अप्रैल 2002 में प्रकाशित की गई थी, द्वारा उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा की थी ;

और, केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि उस भूमि मे, जिसके भीतर उक्त पाइपलाइन बिछाए जाने का प्रस्ताव है और जो इस अधिसूचना से उपाबद्ध अनुसूची में वर्णित है, उपयोग के अधिकार का अर्जन किया जाए ;

अतः, अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उसमें उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है ;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको उक्त अधिनियम की धारा (3) की उपधारा (1) के अधीन जारी की गई अधिसूचना की प्रतियां साधारण जनता को उपलब्ध करा दी जाती हैं; इककीस दिन के भीतर, भूमि के नीचे पाइपलाइन बिछाने के लिए, श्री गोखले काशीनाथ, सक्षम प्राधिकारी, जी.टी.आई.सी.एल. एइवान-ई-शाही, गुलबर्गा-585 102 कर्नाटक राज्य को लिखित रूप में आक्षेप भेज सकेगा।

| अनुसूची ३ (१) | | | | | | राज्य कार्टक | | |
|---------------|-------------|---------|-----------|-------|--------|--------------|----------|--|
| क्र. सं. | गांव का नाम | सर्व नं | हिस्सा नं | गट नं | लेत | | | |
| | | | | | हेक्टर | आर | सेटीमीटर | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | |
| 1 | तिलोगांव | 143 | 1/3 | | 0 | 03 | 90 | |
| | | | | | 0 | 03 | 90 | |

[फा. सं. एल.-14014/21/02-जी.पी.]
स्वामी सिंह, निदेशक

New Delhi, 26th May, 2003

S.O. 1556 Whereas it appears to the Central Government that it is necessary in the public interest for the Transportation of the Natural Gas from exploration blocks in the Northern/Southern offshore Goa and Structures in Andhra Pradesh of M/s Reliance Industries Limited, the promoter company of M/s Gas Transportation and Infrastructure Company Limited to the various consumers of District Belgaum in the state of Karnataka, a pipeline should be laid by M/s Gas Transportation and Infrastructure Company Limited;

And whereas the Central Government has declared its intention to acquire the right of user vide notification of the Government of India in the Ministry of Petroleum and Natural Gas number S.O. 1149 dated: 1st April, 2002 published in part II Section 3, Sub - section (ii) of the Gazette of India dated the 6th April, 2002;

And whereas it appears to the Central Government that for the purpose of laying such pipeline, it is necessary to acquire the right of user (ROU) in land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub - section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein.

Any person interested in the land described in the said schedule may, within twenty one days from the date on which the copies of the notification issued under sub - section (1) of section 3 of the said Act, are made available to the general public, object in writing to the pipeline under the land to Shri. Gokhale Kashinath, Competent Authority GTICL, Aiwan - E - Shahi Gulbarga - 585 102, Karnataka State.

| SCHEDULE - 3(1) | | | | | | | |
|-----------------|--------------|--------------------|-----------|---------|-------------------|----|----|
| Taluka - Athani | | District - Belgaum | | | State - Karnataka | | |
| Sl. No. | Village Name | Survey No. | Hissa No. | Gat No. | Area | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 1 | Khilegaon | 143 | 1/3 | | 0 | 03 | 90 |
| Total: - | | | | | 0 | 03 | 90 |

[No. L-14014/21/02-G.P.]
SWAMY SINGH, Director

नई दिल्ली, 26 मई, 2003

का. आ. 1557.—केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (i) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत के राजपत्र, भाग 2, खंड 3, उपखंड (ii) तारीख 31 जून 2002 में पृष्ठ 1392 से 1404 पर प्रकाशित भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का. आ. 368 तारीख 09 फरवरी, 2002 में निम्नलिखित संशोधन करती है, अर्थात् :-

उक्त अधिसूचना की अनुसूची में —

- (i) पृष्ठ 1393 पर, स्तंभ (1) में “नानीखावडी” गाँव के सामने सर्वेक्षण संख्या “89/P” के सामने स्तंभ 3,4 और 5 में क्षेत्रफल “0-30-00” के स्थान पर, क्षेत्रफल “0-38-10” रखा जाएगा ;
- (ii) पृष्ठ 1393 पर, स्तंभ (1) में “नानीखावडी” गाँव के सामने सर्वेक्षण संख्या “82” के सामने स्तंभ 3,4 और 5 में क्षेत्रफल “0-75-00” के स्थान पर, क्षेत्रफल “0-80-10” रखा जाएगा।

[फा. सं. एल.-14014/5/02-जी.पी.]

स्वामी सिंह, निदेशक

New Delhi, 26th May, 2003

S.O 1557.— In exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Petroleum and Natural Gas number S.O 368, dated the 31st January, 2002, published at pages 1405 to 1417 in Part II, section 3, sub-section (ii) of the Gazette of India, dated the 9th February, 2002, namely:-

- In the Schedule to the said notification:-
- (i) at page 1406 against village “Nanikhavdi” in column No.1, survey No.”89/P” in column 2, for the area “0-30-00 ” in columns 3,4 and 5, the area “0-38-10” shall be substituted;
- (ii) at page 1406 against village “Nanikhavdi” in column No.1, survey No.”82” in column 2, for the area “0-75-00” in columns 3,4 and 5, the area “0-80-10” shall be substituted.

[No. L-14014/5/02-G.P.]
SWAMY SINGH, Director

नई दिल्ली, 26 मई, 2003

का. आ. 1558 केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि गुजरात राज्य में जामनगर से मध्यप्रदेश राज्य में भोपाल तक पुनः गैसीकृत द्रवित प्राकृतिक गैस के परिवहन के लिए गैस ट्रांसपोर्टेशन एंड इन्फ्रास्ट्रक्चर कम्पनी लिमिटेड द्वारा पाइपलाइन बिछाई जानी चाहिए ;

और केन्द्रीय सरकार ने उपयोग के अधिकार के अर्जन करने की अपने आशय की घोषणा, भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का. आ. 368 तारीख 31 जनवरी 2002 द्वारा भारत के राजपत्र के भाग 2, खण्ड 3, उप खण्ड (ii) तारीख 09 फरवरी 2002, में प्रकाशित की थी :

और केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि उस भूमि में, जिसके भीतर उक्त पाइपलाइन बिछाए जाने का प्रस्ताव है और जो इस अधिसूचना से उपाबद्ध अनुसूची में वर्णित है, उपयोग के अधिकार का अर्जन किया जाए ;

अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उसमें उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है ;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से, जिसको उक्त अधिनियम की धारा 3 की उपधारा (1) के अधीन भारत के राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियां साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस दिन के भीतर, भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उपयोग के अधिकार के अर्जन के संबंध में श्री ए. के. संघवी, सक्षम प्राधिकारी, जी. टी. आई. सी. एल., पाइपलाइन परियोजना, 102-103, 'शिवम', 9 पटेल कालोनी, पंडित नेहरू मार्ग, जामनगर 361 008, गुजरात को लिखित रूप में आक्षेप भेज सकेगा ।

अनुसूची

तालुका : जामनगर

जिला : जामनगर

राज्य : गुजरात

गाँव का नाम

सर्वेक्षण संख्या / खंड संख्या

क्षेत्रफल

हेक्टर

एअर

सेन्टीएअर

| 1 | 2 | 3 | 4 | 5 |
|---------|--------|---|----|----|
| 1. सपडा | 89/4/2 | 0 | 13 | 20 |
| | 89/5 | 0 | 14 | 40 |

[फा. सं. एल.-14014/5/02-जी.पी.]

स्वामी सिंह, निदेशक

New Delhi, 26th May, 2003

S.O. 1558 Whereas it appears to the Central Government that it is necessary in the public interest that for the transportation of the regassified Liquefied natural gas from Jamnagar in the State of Gujarat to Bhopal in the State of Madhya Pradesh a pipeline should be laid by Gas Transportation and Infrastructure Company Limited for implementing Jamnagar-Bhopal pipeline project.

And whereas the Central Government has declared its intention to acquire the Right of Use vide Notification of the Government of India in the Ministry of Petroleum and Natural Gas number S.O. 368 dated the 31st January 2002, published in Part II section 3, sub-section (ii) of the Gazette of India dated the 9th February, 2002;

And whereas it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the right of user (ROU) in land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub- section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein:

Any person, interested in the land described in the said Schedule may, within twenty-one days from the date on which the copies of the notification issued under sub-section (1) of section (3) of the said Act, are made available to the general public, object in writing to the laying the pipeline under the land to Shri A.K.Sanghavi, Competent Authority, Gas Transportation and Infrastructure Company Limited, Pipeline Project, 102-103, 9 Patel Colony, Pandit Nehru Marg, Jamnagar- 361 008, Gujarat.

SCHEDULE

| Taluka :- Jamnagar | Name of Village | District :- Jamnagar | Survey No. / Block No. | State :- Gujarat | | |
|--------------------|-----------------|----------------------|------------------------|------------------|-------------|-----------------|
| | | | | Hectare | Area Are | Area Centare |
| | 1 | | 2 | 3 | 4 | 5 |
| 1 : Sapada | | | 89/4/2 | 0 | 13 | 20 |
| | | | 89/5 | 0 | 14 | 40 |

[No. L-14014/5/02-G.P.]
SWAMY SINGH, Director

श्रम मंत्रालय

नई दिल्ली, 2 मई, 2003

का. आ. 1559.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-1 धनबाद के पंचाट (संदर्भ संख्या 141/1990) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-04-2003 को प्राप्त हुआ था।

[सं. एल-20012/220/89-आई. आर. (सी. 1)]

एस.एस. गुप्ता, अवर सचिव

MINISTRY OF LABOUR

New Delhi, the 2nd May, 2003

S.O. 1559.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947); the Central Government hereby publishes the award (Ref. No. 141/1990) of the Central Government Industrial Tribunal I Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 30-04-2003.

[No. L-20012/220/89-IR (C. I)]

S. S. GUPTA, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. I, DHANBAD**

In the matter of a reference U/S. 10(1)(d)(2A) of
Industrial Disputes Act, 1947
REFERENCE NO. 141 of 1990.

PARTIES:

Employers in relation to the management
of Putki Balihari Project of M/s. BCCL

AND

Their Workmen.

PRESENT : Shri S. H. Kazmi,
Presiding Officer.

Appearances :

For the Employers : Shri H. Nath, Advocate.
For the Workmen : Shri D. Mukherjee, Advocate.
State : Jharkhand Industry : Coal

Dated, the 21st April, 2003

AWARD

By Order No. L-20012(220)89-I.R. (Coal-I) dated 4-6-90 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-sec. (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the demand of the Coalfields Labour Union that all the Contractor's workers employed

in different collieries for repairing of quarters and handling of goods be regularised in the services of M/s. Bharat Coking Coal Ltd. is justified? If so, to what relief are the workmen entitled to?”

2. Precisely, the case of the sponsoring union is that the concerned workmen, namely, Rameshwar Das and 51 others belong to Basudepur Basti who due to underground fire rendered homeless, jobless alongwith other residents and the management on the intervention of the then Dy. Commissioner and the Trade Union leaders provided them with different miscellaneous jobs, such as, house repairing, material handling etc. in different gangs. Further, it has been said that these concerned workmen worked as a sort of Co-operative Gang of 52 workers and the management disbursed payment through one of them, namely, Rameshwar Das and the work order was also issued in his name by the management. It has been said that the management, however, did not observe and comply with the necessary formalities as required under Contract Labour (Regulation and Abolition) Act, 1970 and it did not discharge its obligations as required under the said Act. It is said that since the concerned workmen were not getting proper wages they represented their case to the management for being absorbed on the departmental roll as had been done in the case of Bharat Rabidas and 14 Others of Basudevpur Colliery/Basti who had also been performing the same nature of job. It is also said that on the basis of recommendation of Banerjee Committee several Cooperative workers/Contractor workers who had completed 190 days in underground and 240 days on surface were taken in employment, but no consideration was made in regard to the claim of the concerned workman. Further it has been said that the concerned workmen who were serving the management since last 15 years and who were employed without complying with the formalities under the Contract Labour (Regulation & Abolition) Act, 1970 should be deemed to be the workers of the employer in terms of different High Court Judgement on the subject..

3. Apart from taking the grounds of vagueness of the terms of reference on several counts, the management, on the other hand, has come out with the case that then the industrial dispute was raised by the sponsoring union then on receipt of the notice the management appeared before the A.L.C. (C) and pointed out that the union's demand is not clear and it does not indicate in which mine loading work was done or which quarters of which mine were repaired. It was also pointed out that if such works have been done through the agency of contractor them the management has no concern with it. Despite that, it is said, the required informations were not supplied to the management during the pendency of the dispute. It has been said that it is a concocted case designed to get employment for those who have got no right to claim employment from the management and the demand of the union, as such, is not only unreasonable and unjustified rather the entire approach of the union is illegal and baseless. It has also been said that

the job of repairing quarters and handling of goods are purely temporary job and not permanent and as and when need arises these are entrusted to the contractor who employs his own labourers to do such contract works and with the completion of the work the contractors either terminates their services or engage them in other contractual job if the same are available with them. It is said that there is no employer employee relationship with the contract workers in such cases. Further it is said that in BCCL being a Government Undertaking there is appointment procedure prescribed for such appointment. The posts are filled up either through Employment Exchange or through advertisement. Further, it is the sole discretion of the management to select and recruit the number of persons required out of eligible candidates. It is also said that no job can be provided to anyone by violating the prescribed rules and procedures. Lastly, once again it has been said that the demand of the union is baseless, unjustified, anti-labour and against several judicial pronouncements on the subject.

4. In support of their respective stands both sides have placed reliance upon the oral evidence adduced on their behalf. No any document has been exhibited on their behalf. Court witnesses have been examined on behalf of the union and likewise three witnesses have been examined on behalf of the management.

5. As it is apparent from the schedule of the reference itself, the concerned workmen have been described as contractor's workers and the demand of the union is for their regularisation in the services of the management. At page 2 of the written statement of the workmen, however, the statement has been made to the effect that the concerned workmen worked as a sort of co-operative Gang of 52 workers and the management disbursed payment through one person, namely, Rameshwar Das and then further the statement is that the management issued them with work order in the name of Rameshwar Das and Gang. Some of the concerned workmen who have been examined as workman's witnesses have also stated about the formation of Co-operative or their engagement through a Co-operative and about the payment of wages to them through Rameshwar Das who was their gang leader and was the Secretary of the said Co-operative. Particularly WW-3 has said that the said Co-operative was registered and they have filed the papers of the said Co-operative but nothing as such has been produced in the instant case. Further it is pertinent to indicate that at several places in the written statement or the rejoinder the ground has been taken that the conditions or the obligations as contained in the Contract Labour (Regulation & Abolition) Act, 1970 have not been discharged or observed by the management and as per the requirement the management neither filed any lines nor any registration certificate produced as per Secs. 9 and 12 of the said Act. Therefore, inspite of the fact that the statement at some places have been made regarding

the co-operative or the workers being the co-operatives workers but from the own pleading of the union or the workmen and the grounds taken by them it is clear that according to them or even as per their own case the concerned workmen were contractor's workmen and though they have not described the said Rameshwar Das as Contractor but on the basis of their statements he can be taken to be a contractor in whose name, according to them, the work order used to be issued and through whom payment of wages used to be made to them. It is for this reason it appears that in the terms of reference itself the concerned workmen are mentioned as contractor's workers.

Argument from the side of the union or workmen is that all the workmen worked continuously from 1980 to 1987 in different collieries and performed the miscellaneous nature of jobs, such as, house repairing, white washing, material handling etc. and in course of their engagement during the said period they all put in attendance of more than 240 days in one calendar year. Further the argument is that though they all worked as contractor's workmen or through Co-operative and payment was made through one of them who was their Gang Leader but for all practical purposes it was the management who was their employer and they should be deemed to be the workmen of the management because of this reason also that the management neither filed any licence as per CLRA Act, 1970 nor it produced any registration certificate as per Secs. 9 and 12 of the said Act.

The management, on the other hand, has denied the relationship and has asserted that if at all the concerned workmen performed the aforesaid nature of job in different collieries then they did so having been hired or engaged by the contractor and so they can only be taken to be contractor's workers and not the management's workmen. Yet another emphatic assertion of the management is that since it has not been disclosed either in the order of reference or anywhere else as to where the concerned workmen during the said period worked or performed their jobs or which of them worked in which colliery during what period of time and what specific job was performed by each of them, it is not possible to come to a conclusion or its cannot be held that they ever worked under M/s. BCCL. Submission is that on account of such vagueness itself the present reference is fit to be thrown away. It is also the submission that the aforesaid nature of jobs were not regular and continuous nature of job and such jobs are required to be performed only as and when the same are needed.

In view of the aforesaid definite stand being taken on behalf of the respective sides, it is evident that the moot question that requires consideration for the disposal of the instant reference is whether the concerned workmen can be taken to be the workmen of the management or not and also whether they can be taken to have worked continuously or have performed the permanent and

perennial nature of job for a period of 240 days or more in one calendar year prior to their disengagement so as to claim regularisation in the services of the management.

6. In the written statement of the workmen here is mention only to the effect that work orders used to be issued in the name of Rameshwar Das and disbursements of payment also used to be made by the management through him and there is no mention anywhere to the effect that the concerned workmen worked under the control and supervision of the management or the tools and equipments for carrying out the jobs used to be supplied to them by the management itself. There is also no mentioned about the specific place of work of each workmen, the nature of work performed by each of them and the period during which they worked as such in a particular colliery. There is no mentioned in the written statement as to when and in what manner initially the workmen were engaged and they worked until when. At page 4 of the written statement the statements are to the effect that the concerned workmen who were employed without complying with the formalities under CLRA Act, 1970 should be deemed to be the workers of the employer in terms of different High Court's Judgements on the subject. So quite evidently as per the written statement much emphasis is upon this submission based on CLRA act for treating the concerned workmen as the workmen of the management. It further becomes evident that it is only during evidence some of the workmen who have been examined as witnesses (WW-1 to WW-4) have stated that they worked from 1980 to 1987 but in their evidence also they could not state about the nature of work and collieries where they worked during the aforesaid period. They also could not say about their engagement by the management and about any control and supervision by it over their work etc. WW-4 has gone to the extent of saying that appointment letter was issued to them which is not even the case of the workmen and other witnesses have also not stayed about that rather have categorically stated that no any appointment letter was issued. WW-3 in his evidence has said at one place that he has got paper to show that in which colliery he worked for which period and how much payment was made to him. He has said that those papers have been filed. But as it has been said above no document has been filed and the reliance on behalf of the workmen has not been made upon any document. WW-2 has stated that he worked from 1980 to 1987 under co-operative society and then has said that the work of cooperative workers was supervised by the Supervisor, Rameshwar Das of the Society. So, this witness has made it clear that the work was supervised not by the management's authority rather by the said Rameshwar Das. WW-1 in his evidence has said that he has got papers for his working at different collieries and he has filed those papers in this case. WW-2 likewise has said in his evidence that he has filed papers to show that how many days they all have worked in a year from 1980 to 1988 when their work was stopped. As it has been said earlier, not such documents

or any document whatsoever has been filed or exhibited in this case on behalf of the workmen.

Managements witnesses (MW-1 to MW-3), on the other hand, have clearly stated that the management had nothing to do with the concerned workmen. They have also stated that house repairing work of different collieries are occasionally done through the contractor and handling of the material is done by the permanent staff. MW-1 has said that repairing of quarters was casual work which used to take time upon maximum of ten days. MW-3 has made similar statement. According to him, the job of repairing of quarters and boundary of the colliery are allotted on contractual basis and such nature of work is not done regularly. He has further stated that the labourers who do the repair work are engaged by the contractor and it is the contractor who makes them payment. So these witnesses have further made it clear that aforesaid nature of jobs which, as per the case of the concerned workmen were performed by them, were not of regular or permanent nature. It is also not the case of the workmen as neither in the written statement nor in the evidence it has been said anywhere that nature of those works was regular, permanent or perennial. Upon this aspect WW-3 has stated in his evidence that the Co-operative used to engage them as per availability of work in one place and thereafter they used to be shifted to another place where the work was available. No any suggestion appears to have been made to the management's witness about the control and supervision and also the supply of tools and equipments by the management there is also no suggestion to the effect that the workmen were not the contractor's workers rather they were the workmen of the management for all practical purposes.

In course of their cross-examination some of the management's witnesses appear to have stated that the concerned workmen were the workmen of the contractor and they were unskilled labourer or general mazdoors. Taking help of such statements the argument has been made on behalf of the workmen that the witnesses have admitted the fact that the concerned workmen worked under the management through a contractor and that they were, in fact, the workmen of the management. No such inference, in my view, can be gathered merely on the basis of the aforesaid statements made by the witness. If they have said about the working of the concerned workmen as contractor's workers then by that it cannot be meant that according to them all those workmen were the workmen of the management.

It is also pertinent to indicate that neither in the pleading nor in evidence any statement has been made on behalf of the workmen that existence of contractor engagement through contractor was a smoke screen or camouflage and for all practical purposes the workmen were the workmen of the management. The statement is only to the effect, as seen above, that since the compliance of

relevant provision of Contract Labour (Regulation & Abolition) Act, 1970 were not made by the management in respect of licence and registration of the contractor, the workmen should be deemed to be the workmen of the management in terms of several judicial pronouncements. During the argument also much stress has been made upon the aforesaid submission based on the said Act. Reliance has also been placed upon a decision reported in AIR 1999 (SC) 1160 (Secretary, Haryana State Electricity Board V/s. Suresh and Others). But this decision, I am afraid, does not support the aforesaid contentions raised on behalf of the concerned workmen as it has not been held therein that merely on account of non-compliance of the aforesaid statutory provisions it can necessarily be deemed that the workmen were the employees of the management and not of contractor. In this regard rather the decisions of Hon'ble Supreme Court reported in 1992 Lab. I. C.-75(SC)—(Dinanath and Others Vs. National Fertiliser Ltd.) appears to have direct bearing as in that case it has been clearly held by taking into account Secs. 7, 12 and 24 of CLRA Act, 1970 that on account of non-compliance with the provisions of registration or licence the only consequence is exposure of either the management or the contractor to prosecution under Sec. 23 and 25 of the said Act and just because of such non-compliance the contract labour employed does not become direct employee of the principal employer.

In nut shell, the aforesaid contention advanced on behalf of the concerned workmen is devoid of substance.

From all that has been observed above on the basis of the materials on record it becomes apparent that besides glaring and inherent vagueness in pleading and in evidence, as highlighted above, it has also not been sufficiently established that the concerned workmen worked as contractor's workers under the management. Even if it is taken that they worked being engaged by the contractor or through a co-operative, there is nothing on the basis of which it can be concluded that despite the presence of contractor or the co-operative the relationship between the workmen and the management was of employer and employee and so having worked under the management for a long time they should have been regularised in the services of the management.

7. By citing a decision of Hon'ble Supreme Court reported in 1978 Lab. I.C. 1264 (Hussainbhai, Calicut Vs. The Alath Factory Thezhilali, Union Kozhikode & Ors.) it has been submitted that mere existence of any contract or contractor is not necessarily indicative of the fact that a workman for all practical purposes is the workman of the contractor and not the employer rather according to submission, by piersing veil it is required to discern as to whether the contract system or the contract is just a camouflage to frustrate the interest of the workmen or in fact the said contractor is a genuine one and the workman is genuinely a workman of the contractor. In the instant

case, according to submission, it has been sufficiently demonstrated by leading cogent evidence that the concerned workmen were performing the job under the direct control and supervision of the management and as such the existence of contract or contractor can only be treated as a mere camouflage to defeat the interest of the concern workmen and consequently in view of the aforesaid decision the concerned workmen can only be treated as the workmen of the management for providing them the relief in the shape of their regularisation.

As far as the aforesaid legal proposition laid down by the Hon'ble Supreme Court is concerned the same cannot be disputed rather the same still holds good as in the recent decision of Hon'ble Supreme Court also reported in 2001 S.C.C. (L&S) 1121 (Steel Authority of India Ltd. & Ors. Vs. National Union Waterfront Workers & Ors.), it has been held that where a worker is hired in, or in connection with the work of an establishment, a question might arise whether the contract is a mere camouflage as in Hussainbhai's case, AIR 1978 (SC) 1410 and in Indian Petrochemical Corporation case, AIR 1999 (SC) page 2577, the Hon'ble Court observed that if the answer is in the affirmative, the workman will be, in fact, an employee of the principal employer, but if the answer is in negative, the workman would be a contract labour.

In the instant case, it is obvious from the discussions made above, there is nothing on the basis of which it can be concluded that the contract was not genuine rather a mere camouflage to deprive the concerned workmen of their rightful claim and benefits and so the union or the workmen cannot take recourse of the aforesaid submission or the law laid down by the Hon'ble Apex Court in view of the existing position borne out of the materials on record.

It is thus concluded on the basis of all that has been observed above that the concerned workmen cannot be held to be the workmen of the management or there existed any relationship of employer and employee between them.

8. It is also the case of the workmen, as seen above, that they all worked continuously under the management for a very long time. As per their written statement they worked for 15 years but as per the evidence of some of the workmen they worked continuously from 1980 to 1987, and after that they were stopped from their work.

Forcefully it has been contended that since the concerned workmen have worked continuously for more than 240 days in a calendar year they should have been regularised by the management in its service and at least the management be directed to regularised them with all consequential benefits.

It is not only apparent from the terms of reference rather by now it stands well settled also that onus for establishing the fact regarding continuous working or working for more than 240 days in one calendar year lies upon the workmen who comes forward with such a claim

and not upon the management. In this context it would be apt to refer to a decision of Hon'ble Supreme Court reported in 2002 (I) LLJ page 1053 (SC)—(Range Forest Officer Vs. S.T. Hadimani). In the fact of that case the workman claimed that he had worked for 240 days and his services was terminated without paying retrenchment compensation. The management denied this stand of the workman and thereafter the Tribunal gave its finding in favour of the workman by placing onus on the management in respect of establishing the aforesaid fact. The Hon'ble Court held that the Tribunal was not right in placing onus on the management. It further held that the claimant has to lead evidence to show that he had worked for 240 days in preceding year by producing receipt of salary or wages or letter of appointment. In a subsequent decision also reported in 2002-III-LLJ-1111 (SC)—(Essen Deiniki Vs. Rajib Kumar), the Hon'ble Supreme Court reiterated its aforesaid earlier view by holding that it is for the workmen to prove the completion of 240 days work.

In the instant case no material has been put forward in support of the stand regarding continuous workings or working for more than 240 days in one calendar year. The workmen's witnesses have stated about working from 1980 to 1987 and have also stated that they have got papers to show their continuous working during that period. Some of them even have said that they have already filed the same in the present case but as it has been observed earlier also no any document has been filed and no any reliance has been placed upon any document. Management's witnesses, on the other hand, apart from denying the fact regarding the working of the workmen under the management during the aforesaid period have specifically stated in their evidence that it is incorrect to say that the concerned workmen had worked for more than 240 days in one calendar year.

Therefore, the only conclusion which can be arrived at on the basis of the materials on record is that the workmen failed to discharge the onus which was on them in regard to establishing the aforesaid fact and as such it stands not proved or established that the concerned workmen worked continuously during the aforesaid period or worked for 240 days or more in one calendar year under the management.

9. In view of all the above it is finally concluded that the concerned workmen cannot be held to be entitled for their regularisation or the demand of the union regarding their regularisation in the services of the management cannot be held to be justified.

10. The award is, thus, made hereunder :

The demand of the Coalfields Labour Union that all the contractor's workers (as per list attached to the order of the reference) employed in different collieries for repairing of quarters and handling of goods be regularised in the services of M/s. BCCL, is not justified and the workmen, as such, are not entitled to any relief whatsoever.

S. H. KAZMI, Presiding Officer

138161/03-4

नई दिल्ली, 2 मई, 2003

का. आ. 1560.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कोल इंडिया लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण I, धनबाद के पंचाट (संदर्भ संख्या 114/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-04-2003 को प्राप्त हुआ था।

[सं. एल-20012/113/96-आई. आर. (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 2nd May, 2003

S.O. 1560.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 114/97) of the Central Government Industrial Tribunal I, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Coal India Ltd. and their workman, which was received by the Central Government on 30-04-2003.

[No. L-20012/113/96-IR (C-I)]

S. S. GUPTA, Under Secy

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference U/s. 10(1)(d)(2A) of the
Industrial Disputes Act, 1947

REFERENCE NO. 114 of 1997

PARTIES :

Employers in relation to the management of
Coal India Ltd., Patna.

AND

Their Workmen.

PRESENT : Shri S. H. Kazmi,

Presiding Officer

APPEARANCES :

For the Employers : Shri D.K. Verma, Advocate.

For the Workmen : Shri D. Mukherjee, Advocate.

State : Bihar. Industry : Coal

Dated, the 10th April, 2003

AWARD

By Order No. L-20012/113/96-I.R. (C-I) dated 26-5-97
the Central Government in the Ministry of Labour has, in

exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-sec. (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Coal India Ltd., in terminating the services of Shri Nageshwar Ram w.c.f. 11-4-1994 is legal and justified? If not, to what relief is the workmen entitled to?"

2. Arguments of both sides have already been heard earlier upon the petition dated 24-2-2003 filed on behalf of the management raising objection with respect to the maintainability of the instant reference and now the said matter is disposed of by this order as hereunder.

3. While pressing the said petition it has been urged on behalf of the management that the present reference relates to dismissal or termination of the service of the concerned workman by the management and as against the same action of the management or being aggrieved by the same order of dismissal dated 11-4-94, the workman had moved the Hon'ble Patna High Court also by filing a writ petition being No. CWJC 7047/94. It has been contended that after hearing the parties the Hon'ble Court dismissed the writ petition of the workman concerned vide order dated 9-9-94. The contention is that after the disposal of the said case by the Hon'ble High Court there is nothing left to be adjudicated in the instant case and as such it may be disposed of at this stage itself after holding the same as incompetent or not maintainable.

No rejoinder to the aforesaid petition has been filed on behalf of the workman. However, during the arguments, in reply to the aforesaid submission, though the fact, as regards the filing of the writ petition before the Hon'ble High Court challenging the same order of the management and then dismissal of the said case by the Hon'ble High Court on merit, have not been challenged or disputed, but it has been urged on behalf of the workman that no reason has been assigned in that case by the Hon'ble High Court while dismissing the same or disallowing the relief as claimed and so in that view it is still upon for this Tribunal to look into and consider the entire aspect and then make final adjudication in the matter.

Having gone through the copy of the aforesaid order of the Hon'ble High Court provided by the management, the aforesaid submissions made on behalf of the management appeared to be correct and well founded and those made on behalf of the workman appeared to be completely devoid of substance.

As it has already been observed above, the facts relating to the filing of the writ petition challenging the same action of the management and then disposal of that case by the Hon'ble High Court on merit are not in dispute. The only contention advanced on behalf of the workman is that this reference is maintainable and can well be

adjudicated as no reason for dismissal of the aforesaid case was assigned by the Hon'ble High Court in its order.

Firstly on this aspect I have no hesitation in observing at the very outset that the aforesaid submission made on behalf of the workman is quite untenable, absurd and devoid of merit. It is beyond the power and jurisdiction of this Tribunal to sit in appeal over the order or judgement passed by a Superior Hon'ble Court to find out whether the conclusion is based on reasonings or not. Rather it is highly unjust and whimsical to make any suggestion in that regard or to call upon this Tribunal to make consideration in the manner as suggested, despite the existence of the aforesaid order of the Hon'ble High Court. Secondly, upon the perusal of the said order of the Hon'ble High Court it is very clear and apparent that the Hon'ble Court noticed the rival, contention, considered all the relevant aspects involved and only then came to the conclusive finding. Ultimately the conclusion has been arrived at by the Hon'ble Court by observing as hereunder :

"From a bare reference to the impugned order, there is no doubt that the charges against the petitioner are very serious. It is also evident that the petitioner was given a reasonable opportunity to file written statement and participate in the enquiry proceeding. The enquiring officer as well as the disciplinary authority have examined all the relevant materials, produced by the management and the petitioner. Therefore, it can not be said that a reasonable opportunity was not given to the petitioner. Apart from the aforesaid, there is no denial that the petitioner was absent during the period, indicated in the charge. Only defence of the petitioner is that he was ill from time to time and, therefore, filed applications subsequently for grant of leave. But this is not his case that leave was sanctioned for his over-staying, which would be evident from the enquiry report and the impugned order.

In the result, we find no merit in this application. The same is, accordingly, dismissed."

Thus, in view of all the aforesaid it can well be observed that legality and propriety of the order of dismissal or the action of the management had already been the subject of scrutiny by the Hon'ble High Court and so after the aforesaid order of the Hon'ble High Court upholding the dismissal of the concerned workman from service, it is no more available for the workman to reagitate the same issue or dispute which has already been finally adjudicated upon by a Superior Hon'ble Court.

Consequently this reference cannot be held to be maintainable in view of the aforesaid development.

This reference, as such, stands finally disposed of as being not maintainable.

S. H. KAZMI, Presiding Officer

नई दिल्ली, 2 मई, 2003

का. आ. 1561.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.एस.पी.डी.आई.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण आसनसोल के पंचाट (संदर्भ संख्या 1/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-4-2003 को प्राप्त हुआ था।

[सं. एल-20012/289/2001-आई.आर. (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 2nd May, 2003

S.O. 1561.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1/2003) of the Central Government Industrial Tribunal, Asansol now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of CMPDIL and their workman, which was received by the Central Government on 30-4-2003.

[No. L-20012/289/2001-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL ASANSOL

In the matter of a reference U/S. 10(1)(d)(2A) of the Industrial Disputes Act, 1947.

Reference No. I of 2003

Parties : Employers in relation to the management of M/s. C.M.P.D.I.L.

AND

Their Workman

PRESENT : Shri Ramjee Pandey,
Presiding Officer

Appearances :

| | | |
|-----------------------|---|--|
| For the Employers | : | Shri B.M. Prasad, Advocate, and Shri A.K. Sinha, Advocate. |
| For the Union/Workman | : | Shri D. Mukherjee, Advocate, and Secretary, Bihar Colliery Kamgar Union, and Shri K. Chakravarty, Advocate. |

State : Jharkhand Industry : Coal

Dated, the 16th April, 2003

AWARD

In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the

Industrial Disputes Act, 1947, the Central Government, Ministry of Labour, vide its Order No.L-20012/289/2001-IR(C-I) dated 12-9-2001, referred the following dispute for adjudication by the Central Government Industrial Tribunal No.I, Dhanbad.

“Whether the demand of the Bihar Colliery Kamgar Union for regularisation of Shri Subhas Banerjee as Pump Operator from the management of M/S. CMPDIL is justified? If so, to what relief is the concerned workman entitled and from what date?”

2. When this dispute was pending before Central Govt. Industrial Tribunal No.I, Dhanbad, on the request of the said Tribunal and the workman, in exercise of the powers conferred by Section 7A read with Sub-section (1) of Section 33-B of the Industrial Disputes Act, 1947, the Central Government, Ministry of Labour, vide its order No. L-20012/289/2001-IR(C-I) dated 16-1-2003 transferred this dispute for adjudication by this Tribunal. When the record of this dispute was received from perusal of the same it appeared that both the parties had concluded their evidence and the case was pending for arguments of both the parties and hence the case was taken up from the stage when the same was transferred to this Tribunal.

3. Both the parties have already appeared before this Tribunal by their respective representatives. Sri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union, alongwith Sri K. Chakravarty appeared for the union and Sri B.M. Prasad, Sr. Advocate alongwith his junior appeared for the management. Both the parties have already filed their respective written statements as well as rejoinders and contested the dispute.

4. The facts of the case, in brief, are that the workman, namely, Subhas Banerjee, has been working as Pump Operator under the management of M/s. CMPDIL since 1st April, 1997 and a demand was put by the union before the management to regularise him in service as Pump Operator, but the demand was not satisfied and hence the union raised the dispute which has been referred to the Tribunal for adjudication.

5. The case of the union, in brief, is that the workman has been working as Pump Operator for supply of water in the office of CMPDIL building and he has been doing the job of plumber, such as, repairing/replacing water taps, repairing pipe-line etc. in the office building of CMPDIL, officers' bungalows, staff quarters and Guest House of CMPDIL since 1-4-1997 continuously. The work of Pump Operator and other works being performed by the workman continuously in the premises of the office of CMPDIL are of permanent nature and the work of the workman is under direct control and supervision of the management. The workman has been performing the job regularly and continuously and he has put himself in attendance for more than 240 days in each calendar year.

The nature of jobs performed by the workman are rendered to and beneficial for the management of C.M.P.D.I.L. Although the workman has been performing this permanent nature of job and rendering his services to the management directly under its control and supervision still the management has been paying him wages below the rate of N.C.W.A. only on the ground that the management is wrongly behaving the workman as a contractor. The further case of the union is that the management has been forcing the concerned workman to submit tender and to quote rate for the work and also to submit bills to receive his monthly wages and to pose the workman as a contractor only with a view to camouflage the real issue. Practically the management is paying wages to the workman monthly on the basis of bills forcibly got prepared by him. The action of the management posing the workman as contractor and forcing him to submit tenders and bills are only paper transaction to conceal the real fact and camouflage the real issue. The management had been paying the workman Rs. 1600/- per month from 1-4-1997 to 31-3-1998 and thereafter the monthly wage was decreased to Rs. 1400/- per month from 1-4-1998 to 31-3-2000. From 1-4-2000 to 30-6-2001 the management had been paying the wages to the workman at the rate of Rs. 1199/- per month and again thereafter from 1-7-2001 the management has been paying Rs. 1149/- per month and the wage being paid to the workman is below the rate of minimum wages applicable in the state. Really the management taking benefit from the situation of un-employment of the workman has been exploiting him and this is one of the example of exploitation. The concerned workman made several representations before the management for his regularisation and payment of wages as per N.C.W.A. but his demand was not considered by the management and seeing no other alternative the union raised this dispute before the A.L.C (C), Dhanbad. During the conciliation proceeding the management threatened the workman to the extent of removing him from service and thereafter also the management forced the workman to submit tender and bills in the capacity of purported contractor. Ultimately the conciliation proceeding ended in failure and thereafter this dispute has been referred to the Tribunal. It is further stated that the action of the management not regularising the workman in service as Pump Operator and not paying him the wages as per N.C.W.A. is illegal, arbitrary and unjustified. Accordingly a prayer has been made to answer the reference in favour of the workman and direct the management to regularise the workman as Pump Operator with retrospective effect and with arrear of wages and other consequential benefits.

6. The case of the management, in brief, is that the reference is not legally maintainable. The management invited quotations for supervision and operation of 10H.P. pump in the office of C.M.P.D.I.L. at Dhanbad and several parties including M/s. Subhas Enterprises submitted their quotations in the form of tenders. Since the tender of

M/s. Subhas Enterprises was found in accordance with stipulated conditions given in the annexure to the invitation letter the same was accepted and the work order was issued and accordingly he has been performing the job. It is further stated that the concerned workman, namely, Subhas Banerjee reported himself as workman of the above firm, M/s. Subhas Enterprises and has been performing the job of running and maintenance of 10 H.P. Pump and other incidental works connected with the operation of the pump. It is further submitted that the workman was given contract for a period of one year only at a time and after expiry of one year the said contract used to stand terminated automatically and fresh quotations are invited and accordingly with a fresh contract the management used to execute the work order. Actually the workman was performing his job on behalf of M/s. Subhas Enterprises year to year basis on the basis of work order issued in favour of M/s. Subhas Enterprises and he was merely a contractor worker and not the worker of the management. There is no relationship of employer and employee between the management and the concerned workman and as such the demand of the union for regularisation of the workman is not legal and the workman is not entitled to be regularised. The workman approached the sponsoring union with ulterior motive with a view to get himself inducted in the employment of the management by way of regularisation and there is no justification in raising this dispute. By way of rejoinder the management has denied the statements and allegations made by the union in its written statement and has denied the fact that the management made any attempt to camouflage the real issue. Accordingly a prayer has been made to pass an award holding that the concerned workman is not entitled to any relief.

7. The union also filed a rejoinder and has denied all the statements and allegations made by the management in its written statement and has repeated the same pleas already taken in its written statement. The union has further contended that the management has falsely alleged that no employer-employee relationship exists between the workman and the employer.

8. Both the parties adduced oral as well as documentary evidence on their behalf. The union and the management both examined only one witness each. Sri Subhas Banerjee, the workman has been examined by the union as WW-1 whereas Sri A.K. Chakravarty, Dy. Chief Engineer (E & M) of CMPDIL, Dhanbad has been examined on behalf of the management as MW-1. Out of documentary evidence adduced on behalf of the union, Ext. W-1 series are the letters, Ext. W-2 is the copy of register of complaint, Ext. W-3 are slips said to be issued to the workman by Sri G.K. Bhagat, Civil Dy. Engineer by which the workman was being entrusted to visit the quarters for the purpose of repairing and maintenance. Ext. W-4 series are copies of receipts showing purchase of materials for the purpose of repairing and maintenance and Ext. W-5 is

the copy of letter dated 19-4-1997 sent to the workman by Sri A. K. Ghosh, Dy. Chief Engineer (E&M). Out of the documentary evidence adduced on behalf of the management, Ext. M-1 is photo copy of a letter showing submission of quotation, Ext. M-2 series are photo copies of bills of different dates submitted by M/s. Subhas Enterprises, Ext. M-2/1 series are photo copies of vouchers of different dates of CMPDIL showing payment of wages to the workman, Ext. M-3 series are photo copies of tender notices in different dates and Ext. M-4 is photo copies of a paper taking decision of Tender Committee accepting a particular tender.

9. As mentioned above, earlier the case was pending before Central Govt. Industrial Tribunal No. 1, Dhanbad, where both the parties adduced their evidence and the case was fixed for arguments and thereafter by order of the Central Government, Ministry of Labour this case was transferred to this Tribunal.

10. On pleadings of the parties and the submissions made on their behalf the following issues arise for consideration and adjudication :

- (i) Does the relationship of employee and employer between the said workman and the management exist?
- (ii) Whether the plea of the management that the said workman is a contract labour is a camouflage or actually he is a contract labour?
- (iii) Whether the demand of the union for regularising Subhas Banerjee as Pump Operator from the management is justified? and if so, to what relief he is entitled to and from what date?

All the three issues are inter-connected and inter-linked with each other and hence the same is being considered and discussed altogether.

11. The case of the union is that Subhas Banerjee has been working as Pump Operator for supplying water in the office building of CMPDIL and also doing the job of plumber since 1-4-1997 continuously. It is further case of the union that the job performed by the workman is of permanent nature and only with a view to camouflage and conceal the real fact the management has been behaving the workman as a contractor and for that purpose the workman is being forced to submit tender, quote rate and also submit monthly bills for payment and hence the plea of the management regarding contract labour is only a camouflage although Subhas Banerjee is the employee of the management of CMPDIL. On the other hand, the case of the management is that the management invited quotations for supervision and operation of 10 H.P. Pump in CMPDIL office and in response to invited quotations several parties including M/s. Subhas Enterprises submitted their quotations in the form of tender and since the quotation tendered by M/s. Subhas Banerjee was in accordance with stipulated conditions the same was

accepted and the work order was issued in favour of M/s. Subhas Enterprises and Subhas Banerjee is a Contractor's worker. It has been further pleaded that Subhas Banerjee is not the employee of CMPDIL and the relationship of employee and the employer between Subhas Banerjee and the management does not exist and hence the question of his regularisation does not arise and the demand of the union in this regard is not legal and justified.

12. Learned lawyer appearing on behalf of the union submitted that Subhas Banerjee is actually the worker of the management and the plea of the management to the effect that he is a contractor's worker is not the real fact rather it is camouflage. In support of his contention the learned lawyer placed reliance on the case of Hussainbhai, Calicut Vs. The Alath Factory Thezhilali, Union Kozhikode & Ors. reported in 1978 Lab. I.C. 1264 (SC), the case of Steel Authority of India Ltd. & Ors. Vs. National Union Water Front Workers & Ors reported in 2001 L.L.R. 961 (SC) and the case of Employees in relation to the Management of Central Mine Planning and Design Institute Ltd. Vs. Presiding Officer, Central Govt. Industrial Tribunal No. 1 & Anr., reported in 2003(I) J.C.R. 409 (Jhr). On the other hand, the learned lawyer for the management submitted that there is no chitt of evidence on the record that Subhas Banerjee is the employee of the management rather all the documents filed either on behalf of the management or on behalf of the union indicate that Subhas Banerjee was performing his job as a contractor's worker and all the paper transactions show that he is a contractor's worker and hence he cannot be taken to be the employee of the management and no contractor's worker can be directed to be absorbed or regularised and it is not the liability of the management to regularise him as Pump Operator. Although no case law was cited by the learned lawyer of the management separately rather he also placed reliance on the case of Steel Authority of India Ltd. & Ors. Vs. National Union Water Front Workers & Ors. Reported in 2001 L.L.R. 916 (SC).

13. In view of contrary submissions I perused the specific pleadings of the parties, the evidence adduced on their behalf and the case laws relied upon by them. In the case law reported in 1978 Lab. I.C. 1264 (SC), it has been held that where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers subsistence, skill and continued employment. If he, for any reason chokes of the worker is virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex-contract is of consequence when, on lifting the veil or looking at the conspectus of factors governing employment, discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the Management and not the immediate contractor. In case law reported in

2001 L.L.R. 961 (SC), it has been held that the workman means any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or un-skilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied. It has been further held that question may arise whether the contractor is a mere camouflage and if the answer is in the affirmative, the workman will be in fact an employee of the principal employer but if the answer is in the negative, the workman will be a contract labour. It has been further held that if the so-called contract is not a genuine but is sham and camouflage to hide the reality Sec. 10 of the Contract Labour (Regulation & Abolition) Act, 1970 would not apply and the workman can raise and industrial dispute for relief or reliefs that he should be deemed to be the employee of the principal employer and the Industrial Adjudicator would have jurisdiction to entertain such a dispute and grant necessary relief. It has been further held by the Hon'ble Court that if it is a case of genuine contract there cannot be automatic absorption but if the contract is found to be not genuine but mere a camouflage the so-called contract labour will have to be treated as employee of the principal employer who shall be directed to regularise the service of the worker in the concerned establishment.

14. In view of settled principle of law, as mentioned above, I shall examine the cases of the parties as to whether the case of the management of a contract labour is genuine or it is merely a camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. There is no dispute on the fact that it is statutory liability of the management to supply water in the office building for drinking and other use by the officers and workers of the establishment. During cross-examination, the Dy. Chief Engineer (E & M) has admitted in last para of his evidence that the job of Pump Operator is considered to be of permanent nature and a Pump Operator gets wages as per N.C.W.A. and hence it is admitted fact that the job of Pump Operator is of permanent nature. There is nothing on the record to show that any other person except the workman, namely, Subhas Banerjee, is performing the job of a Pump Operator and naturally it is admitted position that Subhas Banerjee alone is performing the job of Pump Operator in the whole office of the establishment. In a case like this when the management came with a case of contract labour on the basis of tenders and quotations, all the papers showing the contract labour will be made to be prepared under the control, direction and guidance of the management because a person working as a contractor is certainly an un-employed person and hardly a documentary evidence can be available in support of the fact that the plea of contract labour is not genuine and the same is a sham and merely a paper transaction. Only after examining the facts and circumstances on the record it can be ascertained that it is not a genuine case of contract labour rather merely a camouflage and a sham transaction.

After examining the facts and circumstances on the record it is clear that all the documentary evidence produced either on behalf of the management or the workman *prima facie*, indicate that Subhas Banerjee is performing his job and getting the wages in the capacity of either a contractor or a contractor's worker, but after examining the facts of the case the following circumstances are on the record which can indicate the real fact and which will be very material circumstances to decide the issue in question :

- (i) It is admitted that it is statutory liability of the management to supply water to the officers and the employees of the establishment for drinking and other use.
- (ii) It is admitted fact that the management has been providing water in the office of the establishment for the use of officers and the employees by operating 10 H.P. Pump.
- (iii) It is admitted fact that Subhas Banerjee is doing the job of Pump Operator for supply of water for use of the officers and the employees of the establishment continuously since 1-4-1997.
- (iv) It is natural that till the establishment will run by the officers and other staff there will be requirement of supply of water in the office of the establishment for their use and naturally the job of Pump Operator is of permanent nature.
- (v) It is admitted fact that since 1-4-1997 no other person has been performing the job of Pump Operator and this job is being performed continuously by Subhas Banerjee.
- (vi) There is nothing on the record to show that Subhas Banerjee is doing the job on behalf of any person said to be a contractor, rather from the fact on the record it is clear that Subhas Banerjee himself is being behaved like a contractor and naturally if it is a case of contract labour Subhas Banerjee alone can be said to be playing the role of contractor and worker both.
- (vii) It is admitted fact that M/S. Subhas Enterprises is not a registered firm and this aspect probabilises the plea of the union that the firm known and styled as M/S. Subhas Enterprises is a creation of the management itself.
- (viii) From the evidence of the management itself it is clear that in the year 1997 monthly wage of the workman was Rs. 1600/- whereas the amount of monthly wage is being decreased every year and same decreased to the extent of Rs. 1149/- . If Subhash Banerjee was actually a contractor it does not appear probable that he would agree to give service to the management for the amount decreasing every year.

(ix) The management has not brought on record any other person to show that alongwith Subhas Banerjee any other person participated in the contract, if it was a really contract. In this regard only Ext. M-4 has been brought by the management which is said to be acceptance of tender of Subhas Banerjee by Tender Committee but except this no other paper has been shown.

From the above circumstances it is clear that taking undue advantage of un-employment of Subhas Banerjee the management has been forcing him to create the paper in support of purporting contract and in my opinion also the learned lawyer for the union has correctly submitted that all the papers are merely the paper transactions to conceal the real fact.

15. In a case law reported in 2003(I) J.C.R. 409(Jhr), the Hon'ble Jharkhand High Court has considered a case of similar fact of the same management. In that case before the Hon'ble Court the management had taken the plea that Mahua Electrical was a contractor through whom two persons, namely, Hare Ram Pandey and P.K. Barat were engaged and P.K. Barat was the Proprietor of Mahua Electricals and in such situation the Hon'ble Court came to the conclusion that if P.K. Barat is alleged to be himself the contractor, meaning thereby the proprietor of Mahua Electricals and he himself was working in the premises of the petitioner, then, it appears that this contractor was practically a camouflage in the beginning and therefore, the petitioner (management) became the principal employer.

16. In view of above discussions I find and hold that all the papers produced by the management for the purpose of proving the fact that the workman was a contractor or contractor's worker, are the creation of the management and the same is sham only to scape from liability and deprive the workman from legal benefits. In this view of the matter I come to a conclusion that the relationship of employee and employer between the workman, namely, Subhas Banerjee and the management of CMPDIL exists. It is also clear that the workman is performing the job of Pump Operator continuously from 1-4-1997 without any breakage and he has completed 240 days service in each calendar year. Hence, I find and hold that it is a fit case in which Subhas Banerjee should have been regularised as Pump Operator and I find that the demand of Bihar Colliery Kamgar Union for regularisation of Subhas Banerjee as Pump Operator is justified and the workman is entitled to be regularised.

17. It is not available on the record as to on what particular date and in which particular year the union put its demand before the management and raised the dispute before the Conciliation Officer. However, from the record it is clear that by order dated 12-9-2001 the Central Government, Ministry of Labour has referred the dispute for adjudication by the Tribunal and hence, in my opinion,

the workman is entitled to be regularised from the month of September 2001 and accordingly the management is being directed to regularise the workman, namely, Subhas Banerjee as Pump Operator from the month of September, 2001 and provide all the consequential benefits of a job of regular Pump Operator.

In the above manner the award is passed.

RAMJEE PANDEY, Presiding Officer

नई दिल्ली, 2 मई, 2003

का. आ. 1562.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, इलाहाबाद बैंक के प्रबंधतान्त्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-2, धनबाद के पंचाट (संदर्भ संख्या 158/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-5-2003 को प्राप्त हुआ था।

[सं. एल-12011/27/1998-आई.आर (बी.-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 2nd May, 2003

S.O. 1562.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 158/99) of the Central Government Industrial Tribunal-cum-Labour Court Dhanbad No. 2 as shown in the annexure in the Industrial Dispute between the management of Allahabad Bank and their workman, received by the Central Government on 1-5-2003.

[No. L-12011/27/1998-IR (B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, AT DHANBAD

PRESENT:

Shri B. Biswas, Presiding Officer

In the matter of an Industrial Dispute under Section
10(1) (d) of the Industrial Disputes Act, 1947

Reference No. 158 of 1999

PARTIES:

Employers in relation to the management of Allahabad Bank and their workman.

APPEARANCES:

On behalf of the workman : Shri J. D. Khanna,
General Secretary.

On behalf of the employers : None

State : Jharkhand. Industry : Banking

Dated, Dhanbad, the 16th April, 2003

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-12011/27/98/IR (B-II), dated, the 17-2-1999/3-3-1999.

SCHEDULE

"Whether the action of the management of Allahabad Bank Patna to prepare another panel of successful candidates for appointment to the post of Computer Operator/Data Entry Operator before exhausting the existing panel already drawn up is justified and legal? If not, to what relief the concerned workmen are entitled?"

2. In course of hearing of the instant reference case a petition has been submitted by the General Secretary of the sponsoring union stating therein that the dispute in question has been resolved amicably between the union and the management and now there remains no more dispute to be adjudicated by this Tribunal. Heard the representative of the workmen and also persued the petition in question. Since the dispute in reference has been resolved between the union and the management, there remains no more dispute to be adjudicated. Under such circumstances and also in view of the petition a 'No dispute' 'Award' is rendered and the reference is disposed of on the basis of non-existence of any industrial dispute between the parties.

B. BISWAS, Presiding Officer

नई दिल्ली, 2 मई, 2003.

का. आ. 1563.—ऑटोग्राफिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑटोग्राफिक विवाद में केन्द्रीय सरकार औटोग्राफिक अधिकरण/अमन्यायालय नं.-1, धनबाद के पंचाट (संदर्भ संख्या 181/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-5-2003 को प्राप्त हुआ था।

[सं. एल-12011/42/2000-आई.आर. (बी.-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 2nd May, 2003

S.O. 1563.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 181/2000) of the Central Government Industrial Tribunal-cum-Labour Court Dhanbad No. 1 as shown in the annexure in the Industrial Dispute between the management of Allahabad Bank and their workmen, received by the Central Government on 2-5-2003.

[No. L-12011/42/2000-IR (B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of a reference U/s. 10(1) (d) (2A) of the Industrial Disputes Act, 1947

Reference No. 181 of 2000

PARTIES:

Employers in relation to the management of Allahabad Bank.

AND

Their Workmen

PRESENT:

Shri S. H. Kazmi, Presiding Officer

APPEARANCES:

For the Employers : None

For the Workman : None

State : Bihar Industry : Banking

Dated, the 21st April, 2003

AWARD

By Order No.L-12011/42/2000/IR(B-II) dated 16-6-2000, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of Sub-section (1) and Section 2(A) of Section 10 of Industrial Disputes Act,1947 (14 of 1947), referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Allahabad Bank Patna in imposing the penalty on S/Shri B. C. Prasad and P. N. Rai vide order dated 24-9-1987 and 12-10-1987 respectively is legal and justified ? If not, what relief the workmen are entitled ?"

2. It appears from the record that after filing of the written statement on 4-7-2002 none has been appearing on behalf of the union or the workman and from the side of the management also despite even the registered notice being sent no appearance has been made. As it is evident, simply adjournment after adjournment has been granted from time to time to enable the parties to appear and take steps. From the conduct of the parties, as noticed above, it appears that either the parties have already settled the dispute amicably or the union or the workman is no more interested in pursuing the present case or the dispute any further for the reason best known to them. Anyway, whatever may be the reason, in view of the developments which have been made so far and also in view of the conduct of the parties particularly the workmen or the union it is needless to allow this case remain pending any further.

This reference, as such, stands finally disposed of.

S. H. KAZMI, Presiding Officer

नई दिल्ली, 5 मई, 2003

का. आ. 1564.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डाक विभाग के प्रबंधतंत्र के संबंद्ह नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 21/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-5-2003 को प्राप्त हुआ था।

[सं. एल-40012/118/2002-आई. आर. (डी. यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 5th May, 2003

S.O. 1564.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 21/2003) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Postal Deptt. and their workman, which was received by the Central Government on 5-5-2003.

[No. L-40012/118/2002-IR (DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 11th April, 2003

PRESENT : K. Karthikeyan, Presiding Officer

Industrial Dispute No. 21/2003

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Sri M. Jaisankar and the Management of the Post Master General, Madurai and Superintendent of Post Offices, Ramanathapuram Division.]

BETWEEN :

Sri M. Jaisankar : I Party/Workman

AND

1. The Post Master General, Southern Region, Madurai. : II Party/Management
2. The Superintendent of Post Offices, Ramanathapuram Division, Ramanathapuram.

APPEARANCE :

For the Workman : M/s. S. Ravi & D. Annibesant, Advocates

For the Management 1 & 2 : Mr. M. Sankar, Addl. SGC

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned industrial dispute for adjudication vide Order No. L-40012/118/2002/IR(DU) dated 29-11-2002/05-12-2002.

2. On receipt of the order of reference from the Government of India, Ministry of Labour, this case has been taken on file as I. D. No. 21/2003 and notices were sent to the parties to the dispute by registered post, with a direction to appear before this Tribunal on 17-01-2003 to file their respective Claim Statement and Counter Statement and to prosecute this case further. In spite of notice sent by Registered Post and duly served on the I Party/Workman, the date on which the hearing was fixed, as no one appeared before this Tribunal for the I Party/Workman, the case was adjourned to the next hearing on 31-01-2003 for filing Claim Statement of the I Party/Workman. The Claim Statement of the I Party has not been filed in spite several adjournments had been given on the request of the counsel for the I Party after recording the non-filing of the Claim Statement of the I Party/Workman. The II Party/Management was directed to file their statement of objection. The counsel who appeared for the II Party/Management 1 and 2 has filed statement of objection and advanced his arguments and orders have been reserved to pass the Award on merits with the available materials on record.

3. When the matter was taken up for enquiry, the learned counsel for the II Party/Management alone present and there was no representation for the I Party/Workman. In the absence of filing of any Claim Statement of I Party/Workman in respect of this industrial dispute referred to by the Govt. for adjudication as one that has been raised by the I Party/Workman, the learned counsel for the II Party/Management has advanced his argument on the basis of the claim that has been raised by the I Party/Workman earlier before the conciliating authority and the statement of objection he has filed before this Tribunal for that claim of the Petitioner. Then the matter has been reserved for orders to be delivered on merits, on consideration of the materials available in this case.

4. Upon perusing the order of reference, the statement of objection and other materials papers on record, after hearing the arguments advanced by the learned counsel for the II Party/Management alone and this matter having stood over till this date for consideration, this Tribunal has passed on merits the following :—

AWARD

5. The Industrial Dispute referred to in the above mentioned order of reference by the Central Govt. for adjudication by this Tribunal is as follows :—

“Whether the action of the management or Superintendent of Post Offices in terminating the

services of Shri M. Jaisankar w.e.f. 03-03-1999 is just and legal? If not, to what relief the workman is entitled?"

Point :

6. Though the dispute has been raised by the I Party/Workman, against the II Party/Management stating that the action of the management of Superintendent of Post Offices, Ramanathapuram Division, in terminating him from service with effect from 3-3-99 is illegal he has not chosen to file his Claim Statement. Though several adjournments have been given on the request of the counsel, who appeared in this case on his behalf. Hence, it was recorded that no Claim Statement of the I Party/ Workman is filed.

7. In the absence of the Claim Statement of the I Party/ Workman, the II Party/ Management has filed their statement of objection to the claim made by the Petitioner/ Workman, by raising this industrial dispute against them by way of statement of objection as a reply to the case of the Petitioner put forth in his earlier claim petition filed before the Labour Commissioner for conciliation.

8. It is specifically averred in the statement of objection that the petitioner was appointed as EDDA Sathankulam BO in account with Perungulam SO from 26-12-92 and that he applied for grant of leave without allowance for various periods from 5-2-96 to 30-2-96, 1-3-96 to 15-3-96, 16-3-96 to 31-3-96, 2-4-96 to 15-4-96, and from 16-4-96 to 30-04-96. The leave applied by the Petitioner was sanctioned by appointing authority and thus he availed leave from 5-2-96 to 30-4-96 but he failed to return for duty on the expiry of the leave. He had not sent any communication to the department thereafter but remained unauthorisedly absent from duty from 1-5-96 for a period exceeding 180 days in a year. The Petitioner is governed by a separate set of rules of P & T E.D. Agents (Conduct & Service) Rules, 1964. Rule 5 envisages that if an E.D. agent has availed leave without allowance for a total number of 180 days or more in a period of one year he shall cease to be an E.D. Agent. The Petitioner has failed to return to duty and remained absence for an indefinite period together with the leave granted exceeded the limit and thereby he had violated the Rule 5 of P & T E.D. Agents (Conduct & Service) Rules. The Sub Divisional Inspector (P) Ramanathapuram Sub Division and appointing authority of the Petitioner had sent a registered notice to the Petitioner informing him of the consequences of availing leave/absenting from duty for a period exceeding 180 days in a year vide registered notice which was returned unserved with the remarks "left India". The Petitioner was proceeded under Rule 8 of P & T E.D. Agents (Conduct & Service) Rules, 1964 for his unauthorised absence. As the appointing authority of the Petitioner became a material witness, it has become necessary to appoint an ad-hoc Disciplinary Authority. The charge sheet was issued by ad-hoc Disciplinary Authority vide a Memo dated 12-3-98 sent by

registered post. It was returned unserved with a remarks "left for Malaysia". Then an Enquiry Officer was appointed to enquiry into the charge levelled against the Petitioner. He conducted the enquiry as per rules. He sent notices fixing dates for each hearing to the Petitioner then and there. All the notices sent to the Petitioner informing him to attend the enquiry were returned unserved with the remarks "left India". The Petitioner did not attend the enquiry. Thus, he failed to avail the opportunity afforded to him. The Enquiry Officer held the charges levelled against the Petitioner as proved on the strength of the oral/ documentary evidence let in during the enquiry. The ad-hoc Disciplinary Authority by a memo dated 3-3-99 awarded the penalty of removing the Petitioner from service and the same was sent to the Petitioner by registered post. It was also returned unserved with the remarks "gone to Malaysia return to sender." The Petitioner has not made any arrangement to receive letters addressed to him wilfully. He did not prefer any representation/appear/petition with the period of limitation prescribed in the rules. After keeping silence for a long time, the Petitioner sent a representation dated 27-10-99 to the Superintendent of Post Offices, Ramanathapuram Division for employment. The Petitioner duly informed by a memo dated 3-3-99 that his services had been terminated. The Petitioner preferred a review petition to the Post Master General, Southern Region, Madurai on 28-3-2000. The same was rejected by the Post Master General, Southern Region, Madurai by his memo dated 12-9-2000. The Petitioner has produced medical certificate for the period from 2-1-96 to 30-1-99 stating that he was ill and was taking treatment. But he had not produced the medical certificate at the appropriate time and applied for leave on medical grounds. The medical certificate appears to have been obtained at a later date to cover up the period of his unauthorised absence. He had not taken any effort to intimate his whereabouts to the leave sanctioning authority/any other higher authority either by himself or through his relatives during his absence. He produced that medical certificate after three years. It has been well established that the Petitioner has left India and that too without applying for leave and without getting permission from the competent authority. He kept silent for about three years. He did not care to apply for leave for his absence from duty and thus, he failed to maintain discipline and exhibited lack of devotion to duty. The Petitioner is expected to maintain devotion to duty as required of him under Rule 17 of P & T E.D. Agents (Conduct & Service) Rules, 1964. The charge levelled against the Petitioner was proved on the strength of the oral and documentary evidence and hence, the penalty of removal from service commensurate with the gravity of the offence. The attempt made by the Petitioner for conciliation before the Assistant Labour Commissioner (Central) Madurai ended in failure. The claim of the Petitioner for reinstatement in service cannot be complied with since he had been unauthorisedly absent from duty wilfully for more

than 180 days and unauthorisedly left the Country, thereby he contravened the provisions of Rule 17 of P & T E. D. Agents (Conduct & Service) Rules, 1964. There was no procedural lapses nor violation of principles of natural justice. On submission of the finding by the Enquiry Officer for the charges levelled against the Petitioner as proved the Disciplinary Authority applied his mind by examining all the records pertaining to enquiry and order the punishment of removal from service. The misconduct committed by the Petitioner disqualifies him from being taken into service, since he displayed lack of devotion to duty, the organisation needs only disciplined workmen. The Petitioner who had failed to maintain discipline will not be shown leniency. The reasons put forth by the Petitioner after three years for his unauthorised absence are far from satisfactory and not believable. The review petition preferred by the Petitioner to the higher authority has been rejected due to lack of merits. He rejected the review petition after considering all the records pertaining to enquiry and Enquiry Officer's report and findings. Hence the Petitioner does not deserve any merit for reinstatement into service. In view of the above the action taken by the management is legally justified and the Petitioner is not entitled to any relief under statutory rules.

9. The averment made by II Party/Management in detail about the misconduct committed by the Petitioner as an unauthorised absence from duty for years from 1-5-96 has not been denied or opposed by the Petitioner/Workman, though he entered appearance before this Tribunal through a counsel. This itself clearly shows that the Petitioner has no substantial case to oppose the averments made by the Respondent/Management in their statement of objection. The postal endorsements on the returned postal communications sent by II Party/Management to the I Party/Workman to his last known address clearly shows that the Petitioner has wilfully abandoned his duty and left for Malaysia subsequent to 1-5-96. This unrebutted documentary evidence available with the II Party/Management proves the claim of the Petitioner that he was sick and was taking treatment for a period of more than three and half years is false and he has come forward with a belated petition to cover up the period of his unauthorised absence as stated by the Respondent/Management in the statement of objection that if really, he had been ill for all these days, he could have produced medical certificate at the appropriate time and applied for leave on medical grounds to the competent authority either through post or through any of his relatives. The failure on the part of the Petitioner on this aspect go to show that he has come forward with the false contention that he was ill and was taking treatment for his illness for all these period of his unauthorised absence for duty. Following the provisions and rules under P & T E.D. Agents (Conduct & Service) Rules, the II Party/Management has taken steps against the Petitioner through proceedings for his unauthorised absence for an indefinite period. Only after exhausting that

prescribed procedures, the Disciplinary Authority has passed an order of removal from service of the Petitioner. Hence, it cannot be said that the penalty of removal from service imposed by the Disciplinary Authority does not commensurate with the gravity of the offence. The Disciplinary Authority only after considering the grave misconduct of the Petitioner awarded the penalty of removal from service. The said misconduct of the Petitioner disqualifies him from being taken into service, since he had displayed lack of devotion to duty. Under such circumstances, it can be said that the action of the management of Superintendent of Post Offices, Ramanathapuram Division in terminating the services of the Petitioner Sri M. Jaisankar w. e. f. 3-3-99 is just and legal. Hence, the concerned workman is not entitled for any relief. Thus, the issue has been answered accordingly.

10. In the result, an Award is passed holding that the concerned workman Sri M. Jaisankar is not entitled for any relief No Cost.

(Dictated to the Stenographer transcribed and typed by him, corrected and pronounced by me in the open court on this day the 11th April, 2003.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined:

On either side : None

Documents Exhibited:

On either side : Nil

नई दिल्ली, 5 मई, 2003

का. आ. 1565.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सांगली बैंक लिमिटेड, सांगली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में लेबर कोर्ट, सांगली के पंचाट [संदर्भ संख्या रेफ (आई.डी.ए.) नं 20/96] को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-5-2003 को प्राप्त हुआ था।

[सं. एल-12012/165/95-आई. आर.(बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 5th May, 2003

S.O. 1565.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award [Ref. (IDA) No. 20/96] of the Labour Court, Sangli now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Sangli Bank Ltd., Sangli and their workman, which was received by the Central Government on 2-5-2003.

[No. L-12012/165/95-IR (B-I)]

AJAY KUMAR, Desk Officer

**ANNEXURE
IN THE LABOUR COURT AT SANGLI
BEFORE SHRI V.S. PADALKAR, JUDGE, LABOUR
COURT, SANGLI**

Reference (IDA) NO. 20/96

The General Manager, 1st Party
Sangli Bank Ltd., Sangli.

Vs.
Shri. Deepak N. Kulkarni, 2nd party
'Sampada' Radhakrishna Extension,
Sangli-416 416.

In the matter of dismissing is legal and justified.

APPEARANCES:

Shri U.J. Chirre, Advocate for the 1st party.

Shri M.B. Kulkarni, Advocate for the 2nd party.

AWARD

(Date 20-3-2003)

The present reference is forwarded by Government of India, Ministry of Labour, Shram Mantralaya, New Delhi vide their Order No. L-12012/165/95-IR (B.I) dt. 9-10-96 for adjudication of dispute of dismissal of 2nd party. On receipt of the said reference the notices were issued to both parties. The parties appeared and filed their respective statement of claim and written statement. The issues at Ex. 0—5 are recorded according to the pleadings of both parties. Thereafter the matter is posted for evidence on Preliminary point i.e. legality of enquiry.

2. The second party workman remained absent since 25-7-2002. The matter is old one. The second party has not lead any evidence in support of his claim till today.

3. In absence of evidence of second party, the dispute couldn't be resolved. Many chances were given to second party to lead evidence before the court but the 2nd party chosen to remain absent in these circumstance. I have no other alternative except to proceed in the matter and pass the following award :

AWARD

The demand of second party workman is hereby rejected.

The reference stand disposed off.

No order as to costs.

Sangli

Dated : 20-3-2003.

V.S. PADALKAR, Presiding Officer

नई दिल्ली, 5 मई, 2003

का. आ. 1566.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतंत्र के संवद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण-कम-लेबर कोर्ट, लखनऊ के पंचाट (संदर्भ संख्या आई.डी. नं. 137/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-5-2003 को प्राप्त हुआ था।

[सं. एल-12012/141/2001-आई. आर. (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 5th May, 2003

S.O. 1566.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No.137/2001) of the Central Government Industrial Tribunal Labour Court, Lucknow now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 2-5-2003.

[No. L-12012/141/2001-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

Shrikant Shukla, Presiding Officer

I.D. No. 137/2001

Ref. No. L-12012/141/2001/IR(B-I) dated 30-8-2001

BETWEEN

Brijesh Kumar S/o Late Devki Nandan Sharma
Village-Dhadama, Post-Umari, Bijanaur

And

The Dy. General Manager, State Bank of India Region-II
Zonal Office, Civil Lines, Bareilly, U.P. 243001.

AWARD

Government of India, Ministry of Labour vide their Order No.L-12012/141/2001-IR(B-I) dated 30-8-2001 referred the dispute of Brijesh Kumar for adjudication on following issues :

क्या प्रबंधन स्टेट बैंक ऑफ इंडिया आंचलिक कार्यालय सिविल लाईन्स बरेली द्वारा श्री बृजेश कुमार पुत्र श्री देवकी नन्दन शर्मा भू. पू. जोन /केन्द्रीय ब्याय को दिनांक 9-3-2000 से नौकरी से निकाला जाना उचित तथा न्यासांगत है ? यदि नहीं तो कर्मकार किस अनुतोष का अधिकारी है ?

The case of Brijesh Kumar the worker in brief is that Brijesh Kumar was appointed in Dec., 1994 by the then Branch Manager, SBI, Noorpur branch Sri P.K. Agarwal as Peon and he was assigned the work under Local Implementation Committee. The State Bank of India, Noorpur branch, Distt. Bijanaur which shall herein after called as Bank employed Brijesh Kumar as Peon-cum-Canteen Boy. It has been alleged that the workman Brijesh Kumar who shall be hereinafter called as workman was

employed for canteen work as well as allied work of office. The workman was engaged in carrying registers keeping files and making them available to the employees and officers of the Bank. The worker has also alleged that he was asked to file documents and segregate the papers etc. The worker has alleged that Local Implementation Committee is part and partial of the Bank and its control is being exercised by Noorpur branch of the Bank. The worker has further alleged that he worked upto 8-3-2000 & on 9-3-2000 he was denied the job. The worker has alleged that he never received any charge sheet and no explanation was called for from him. He further alleges that case of worker is covered under retrenchment but the Bank has not complied with the provision of retrenchment as it has not given any notice or notice pay or retrenchment compensation. The allegations of the workman is that in his place another person is engaged in the job and accordingly the worker prayed that the order of termination of service is illegal and unjustified and therefore he should be reinstated with back wages and continuity in service.

The opposite party i.e. State Bank of India has filed the written statement where in the bank has denied the appointment of the worker in the Bank and instead Bank has alleged that the applicant at no point of time was engaged by the Bank rather he was engaged as Canteen Boy by LIC which shall hereinafter called as Local Implementation Committee. The bank has further stated that for the welfare of staff there is Local Implementation Committee for Staff welfare which is absolutely independent to the bank establishment. The said committee as per welfare scheme look after the arrangement for running of the canteen for which staff of the branch facilitated and entertained on their own costs. The bank has nothing to do the functioning of the said canteen. It has wholly been operated and functioned in its own way and quite independently to that of the Banks Establishment. The canteen run by Local Implementation Committee is not statutory. It is denied that the workman was ever appointed as messenger or peon or on any other post of subordinate services with the establishment of the Bank, the Bank has not paid any salary as such. Therefore, the question of appointing the worker as claimed by him does not arise. It is therefore requested the claim of worker be rejected outright.

After filing of written statement the workman did not file any rejoinder. On the date of filing of rejoinder i.e. 15-11-2002, 10-1-2003, 7-4-2003 workman did not turn-up nor his authorised representative turned up. Another date was fixed i.e. 8-4-2003 for rejoinder affidavit but since no rejoinder is filed by the workman, the following additional issues are framed on the pleadings of the parties.

1. Whether the workman Brijesh Kumar was appointed by Branch Manager in December 1994 as alleged in the statement of claim in para 3 to 4.

2. Whether the workman worked with the Bank till March, 2000 as alleged by the workman in his statement of claim.
3. Whether Brijesh Kumar worked as canteen boy under Local Implementation Committee in the compound of Noorpur branch from 1994 to 2000 and is not employee of the Bank as alleged in the written statement.
4. Whether Brijesh Kumar was terminated from services on 9-3-2000.
5. Whether the termination was justified.
6. Whether Brijesh Kumar is entitled to any relief.

22-4-2003 was fixed for evidence but on 22-4-2003 the worker did not turn up therefore 23-4-2003 was fixed for exparty hearing.

The Bank has examined Sri Dev Raj Singh Branch Manager, Noorpur branch of State Bank of India, Bijnore, U.P. and has closed the evidence.

I have heard learned counsel for the Bank and perused the file.

Issue No. 1, 2 are taken together as burden of proving of those facts on which issues were framed is on the workman.

Issues No. 1 & 2

Whether the workman Brijesh Kumar was appointed by the Branch Manager in Dec. 1994 as alleged in the statement of claim in para 3 to 4.

Whether the workman worked with the bank till March, 2000 as alleged by the workman in his statement of claim.

The worker has failed to prove that he was appointed by the Branch Manager as peon/canteen boy. No specific date has been mentioned by the workman in the statement of claim itself as to at what date he was appointed. On the other hand the management has proved by oral evidence that the worker was not employee of the bank.

Although the workman has alleged in the statement of claim that he was appointed in Dec. 1994 and worked upto 8-3-2000 but no evidence has been produced by him that he worked with the bank till 8-3-2000. The worker has also failed to prove that his services were terminated on 9-3-2000 and therefore issue No. 1,2 are decided in negative.

Issue No. 3

Whether Brijesh Kumar worked as Canteen Boy under Local Implementation Committee in the compound of Noorpur branch from 1994 to 2000 and is not Employee of the Bank as alleged in the written statement.

MW Sri Dev Raj Singh Branch Manager has stated on oath that there are Local Implementation Committee at

branch level for the welfare of its employees which is run by the unit of the Bank. The branch manager has stated on oath that the payment to the employees of the Local Implementation Committee is not made by the establishment of the Bank. Witness has also stated that the Local Implementation Committee is independent of the bank and bank has got nothing to say with the working of the Local Implementation Committee.

The management witness has denied that the worker was engaged in bank or allied work of the Bank.

Learned counsel for the bank Sri D.P. Dewedi has argued that the employees of the Local Implementation Committee has nothing to do with the State Bank of India and matter was once taken in the Supreme Court and the Hon'ble Supreme Court has ruled that the employees of the canteen run by the Local Implementation Committee can not claim to be absorbed as employee. Learned counsel as cited 2000 AIR Supreme Court pays 1518 State Bank of India and others Vs State Bank of India Canteen Employees Union and others.

I have gone through the said case. It was held that employees of canteen which are run at various branches by Local Implementation Committees as per the welfare scheme framed by the State Bank of India would not be employees of the Bank as Bank is not having statutory or contractual obligation or obligation arising under the award to run such canteen.

It has also been held that there is no obligation statutory or otherwise to run the canteen by the Bank. The scheme as stated only provides for grant of subsidy, for running of the canteen. If some more cost is required in running canteen, the number of staff working in that particular branch are required to bear it. The bank is not employing the canteen worker. The Bank is not supervising or controlling the work or the details regarding the canteen or its employees appointed by the Local Implementation Committee. Bank is not taking any disciplinary action or directing any employee to do a particular work for that purpose no scheme is laid down by the Bank. Not only this other more important aspect is "the recruitment" by the bank is to be made by the statutory rules framed by it after giving proper advertisement, test, and/or interview. As against this for appointing canteen employees there are no rules framed by the bank. The clause which provides that canteen should run on "no profit no loss basis" also makes it clear that the subsidy provided is only to the extent of the funds made available and that concerned members of the Local Implementation Committee would ensure that article are purchased on cash payments and no liability is incurred from any source. It is nothing to do running canteen by the Bank.

Learned counsel for the bank has argued that the workman has not alleged that he has been recruited through any advertisement or any interview. He has also stated

that recruiting authority of the peon is Regional Manager of the Bank and the worker is not claiming himself to be appointed by the competent authority of the Bank and therefore it can not be held that the worker is employee of the Bank. On the basis of the case and evidence adduce by the Bank I come to conclusion that the workman is not employee of the bank as alleged by him, rather he appears to be a canteen boy who worked under Local Implementation Committee. Issue No. 3 therefore is decided affirmatively in favour of the Bank.

Issue No. 4

Whether Brijesh Kumar was terminated from services on 9-3-2000.

It was the assertion of the worker in the statement of claim his services is terminated on 9-3-2000 though he has not been able to prove it though the burden was on him. Since the worker was not employee of the State Bank of India as has been proved by the MW, therefore there is no question of termination as alleged by the worker. Issue No.4 therefore decided in negative against the workman.

Issue No. 5

Whether the termination was justified.

From the discussion above and the evidence on record I come to the conclusion that since the workman Brijesh Kumar not employee of the State Bank of India, Noorpur branch, Bijnore, U.P. and there is no question of his termination. Issue No.5 is accordingly decided against the workman.

Issue No. 6

Whether the Brijesh Kumar is entitled to any relief.

Discussion above I come to the conclusion that the Brijesh Kumar has not been able to prove that he was appointed by the bank to carry out work of the bank therefore he is not entitled to the relief claimed.

The question referred to the Tribunal was whether the termination of the worker on 9-3-2000 was justified and valid to this reply is that worker has not been able to prove that he was a employee of the Bank or he was appointed by the competent authority of the bank and therefore the question of termination does not arise and as such the worker is not entitled to any relief.

ORDER

The workman is not appointed by the State Bank of India, Noorpur branch, Bijnore, U.P and therefore there is no question of his termination and therefore the worker is not entitled to any relief.

LUCKNOW

25-4-2003

SHRIKANT SHUKLA, Presiding Officer

नई दिल्ली, 6 मई, 2003

का. आ. 1567.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ बीकानेर एंड जयपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-कम-लेबर कोर्ट जयपुर के पंचाट (संदर्भ संख्या केस.न.सीजीआई टी- 43/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-5-2003 को प्राप्त हुआ था।

[सं. एल-12012/534/2000-आई. आर.(बी-I)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 6th May, 2003

S.O. 1567.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Case No. CGIT-43/2001) of the Central Government Industrial Tribunal/ Labour Court, Jaipur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of State Bank of Bikaner and Jaipur and their workman, which was received by the Central Government on 5-5-2003.

[No. L-12012/534/2000-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR****Case of CGIT 43/2001****Reference No. L-12012/534/2000/IR(B-I)**

Shri Krishan Kumar Garg,

S/o Sh. Banasari Das Garg,
R/o 2-D-1, Sukhadia Nagar,
Sriganganagar-335001.

... Applicant

Versus

1. The General Manager
State Bank of Bikaner & Jaipur,
Head Office, Tilak Marg,
Jaipur (Rajasthan)-302005.
2. The Chief Manager,
State Bank of Bikaner & Jaipur,
Main Branch, 28-A, Public Park,
Sriganganagar-335001. Non-applicants.

PRESENTS:**Presiding Officer : Sh. R.C. Sharma**

For the applicant : Sh. Avinash Jain
 For the non-applicant : Sh. Anurag Agarwal.
 Date of Award : 17-04-2003.

AWARD

1. The Central Government in exercise of the powers conferred under Clause 'D' of Sub-sections 1 and 2(A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) has referred the following dispute for adjudication to this Tribunal which runs as under :—

"Whether the action of the management of State Bank of Bikaner and Jaipur, in terminating the services of Shri Krishan Kumar Garg S/o Shri Banasari Das Garg, Clerk-cum-Cashier, SBBJ Branch, Sri Ganganagar w.e.f. 7-11-1996 was justified? If not, what relief the workman is entitled and from what date?"

2. The workman in his statement of claim has averred that he was initially appointed as clerk-cum-cashier on 11-12-73 in the State Bank of Bikaner and Jaipur and was posted at Sriganganagar Branch, who had to remain on leave on the grounds of his eldest son suffering with cancer, which ultimately resulted in his death and that his youngest son was suffering with grave mental disorder. He submitted the medical certificates along with his leave applications from time to time to the non-applicant No. 1 and when no leave was admissible to him, he was treated as on leave without pay, who continuously worked with the non-applicant No. 1 for a period of about 23 years from 1973 to 1996 without any break in between. The workmen has further stated that the non-applicant management vide its order dated 15-11-96 without giving any prior notice to him terminated his service, who aggrieved with this order made number of representations to the non-applicant No. 1, but he was not permitted to join the duty. He thereafter agitated the matter before the Conciliation Officer who submitted a failure report to the Central Government, which has made the present reference to this Tribunal. The workman has alleged that his service was terminated arbitrarily and without following the bipartite settlements and before terminating his service, he was neither served with any show-cause notice nor any charge-sheet was served on him. As per his pleading, the termination order has been passed on account of his alleged unauthorized absence from duty under clause 18(3) of the circular No. DOP/88/89-90 dated 2-11-89 which does not cover the cases of unauthorized absence, and such cases, according to his averment, are governed by clause 17 of 5th bipartite settlement dated 10-4-89. He has, therefore, pleaded that he is entitled to be reinstated in service with full back wages w.e.f. 7-11-96 and all other consequential benefits with continuity of service.

3. Resisting the claim, the non-applicants in their written statement have averred that the service of the applicant was voluntarily terminated in view of Clause 18(3) of the circular No. DOP/88/89-90 dated 2-11-89 since he remained absent for a period of about 2092 days from his duty. It is further stated that after the termination of his service w.e.f. 11-7-96, the workman has belatedly agitated the claim, which is time-barred and is liable to be rejected.

The non-applicants have alleged that the workman voluntarily refrained from joining the duty, who has not a right to continue in the service, that no leave was due in his credit and that he was keeping absent without the prior permission of the management. The non-applicants at para 2 of the para-wise reply have exhibited a chart showing the total number of days 2092 in distinct years on which the workman refrained from the duty and have denied that the non-applicant management has violated any clause of the bipartite settlement. It has also been further denied that there was any necessity of holding the enquiry against the applicant.

4. In the rejoinder, the workman has denied the facts disclosed in the written statement.

5. In the evidence, the workman has filed his affidavit and on behalf of the non-applicants the counter-affidavit of Sh. B.D. Mathur, the then Chief Manager at Sriganganagar Branch has been filed. The workman has filed 16 documents in support of his claim, whereas the non-applicants have submitted as many as 9 documents.

6. On the basis of the pleadings of both the parties, following issues have been framed :—

- (1) Whether the non-applicant No. 1 has illegally and by adopting unfair labour practices has terminated the services of applicant w.e.f. 7-11-1996 without giving any prior notice and without giving any opportunity of being heard and without giving any compensation?

Burden on applicant.

- (2) Whether the petitioner's case is not governed by clause XVIII (3) of the circular No. 88/89-90 dated 2-11-89 and the non-petitioners ought to have followed the procedure as per their circular No PER/105/88 dated 16-8-88 and circular No. PER/41/89-90 dated 6-7-89?

Burden on applicant.

- (3) Whether the applicant is entitled to be reinstated with full back wages w.e.f. 7-11-96 with all consequential benefits and continuity of service?

Burden on applicant.

- (4) Whether the petition is time barred and is liable to be dismissed on this ground?

Burden on non-applicant.

- (5) Whether the State Bank of Bikaner & Jaipur, Sri Ganganagar is necessary party and on account of the non-joinder of the party, the petition is liable to be dismissed?

Burden on non-applicant.

- (6) Whether the applicant in his demand letters has admitted his absence from duty on time to time

and is thus now stopped from agitating his claim?

Burden on non-applicant.

(7) Relief.

7. I have heard both the parties and have gone through the record. The issue-wise discussion follows as under :—

ISSUE Nos. 1 & 2

8. Since the facts involved under both these issues are identical, these are being discussed under the same heading.

9. The Id. Representative for the workman contends that before terminating the service of the workman, the non-applicant bank has not conducted any departmental enquiry against the workman and clause 18(3) of the circular dated 2-11-89 does not cover the present case, whereas the non-applicant management was required to take the steps in accordance with the circulars Ex. M-2 dated 16-8-88 and Ex. M-3 dated 6-7-89. The Id. representative further submits that the workman had filed so many representations before the management, which were not considered and he never applied for the voluntary retirement. In this way, as per his contention, the order Ex. W-1 dated 15-11-96 terminating his service is illegal.

10. Controverting the submissions made by the Id. representative for the workman, the Id. representative on behalf of the non-applicants has argued that both the parties are governed by the circular dated 2-11-89 which had been issued in furtherance of the conditions laid down under 5th Bipartite settlement dated 10-4-89, which governs the parties and on account of the unauthorized absence of the workman, he was treated to have been voluntarily retired under clause 18(3) of the said circular. He further contends that a notice dated 3-9-96 was issued to the workman stating his unauthorized absence and to report him on the duty, but he did not join the duty and thereafter, the order Ex. W-1 was passed by the non-applicant management.

11. I have given my thoughtful consideration to the rival contentions advanced by both the parties and have carefully perused the judicial decisions referred to by them.

12. Ex. W-1 is an order issued by the non-applicant management that in accordance with clause 18(3) of the circular dated 2-11-89, the workman was treated to have been voluntarily retired from his service w.e.f. 7-11-96.

13. Now, the moot question which crops up in the controversy is as to whether the parties in the dispute are governed by the circular dated 2-11-89 which carries the instructions pertaining to the 5th Bipartite Settlement dated 10-4-89 or not?

14. The Id. representative for the workman has assailed the circular by contending that the instant dispute

is governed by the circulars dated 16-8-88 (Ex. M-2) and dated 6-7-89 (Ex. M-3) issued by the management. Both these circulars contain the instructions with regard to procedure which are to be followed in the event of unauthorized absence of the employee working with the non-applicant managements. Against it, the non-applicant management has submitted the circular dated 2-11-89 (Ex. M-1) and the Bipartite Settlement dated 10-4-89 (Ex. M-1) and has stressed upon that the parties are governed by this Bipartite Settlement. Circular dated 2-11-89 is a clarification of its clauses enshrined under Bipartite Settlement dated 10-4-89. The relevant clause 17 of the Bipartite Settlement dated 10-4-89 is reproduced as below :—

"Clause 17. Voluntary Cessation of Employment by the Employees

The earlier provisions relating to the voluntary cessation of employment by the employee in the earlier settlements shall stand substituted by the following :—

(a) When an employee absents himself from work for a period of 90 or more consecutive days, without submitting any application for leave or for its extension or without any leave to his credit or beyond the period of leave sanctioned originally/subsequently or when there is a satisfactory evidence that he has taken up employment in India or when the management is reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter given a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of the notice, stating inter alia the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days of the notice or given an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from, the date of the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service.

(b) When an employee goes abroad and absents himself for a period of 150 days or more

consecutive days without submitting any application for leave, or for its extension or without any leave to his credit or beyond the period of leave sanctioned originally/ subsequently or when there is a satisfactory evidence that he has taken up employment outside India or when the management is reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter given a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of the notice, stating, inter alia the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days of the notice or gives an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service.

(c) If an employee again absents himself within a period of 30 days without submitting any application after reporting for duty in response to the notice given after 90 days or 150 days absence, as the case may be, the second notice shall be given after 30 days of such absence giving him 30 days time to report. If he report in response to the second notice, but absents himself a third time from duty within a period of 30 days without application, his name shall be struck off from the establishment after 30 days of such absence under intimation to him by registered post deeming that he has voluntarily vacated his appointment."

15. Clause 18(3) of the circular dated 2-11-89 reads as under :—

"in terms of Clause -17 if an employee absents himself for the third time within the period of 30 days after the expiry of such 30 days the Bank may struck off his name from the establishment. Such period of 30, days shall commence from the date he is actually absent. It has no link with the date of his reporting or the date of his second notice or the expiry of such notice."

16. Thus, it is evident that clause 17 of the Bipartite Settlement dated 10-4-89 deals with the absence of an employee without submitting any application for leave or without any leave to his credit or beyond the period of leave sanctioned originally. At para 2 of the para-wise reply in the written statement, the non-applicants have exhibited a chart of the period of absence of the workman from his duty which is reproduced as below :—

| | |
|--------------------|------------------|
| Till the year 1992 | 1039 days |
| In the year 1993 | 139 days |
| In the year 1994 | 299 days |
| In the year 1995 | 365 days |
| In the year 1996 | <u>2M50 days</u> |
| (till 6-9-96) | 2092 days |

17. It is alleged on behalf of the non-applicant management that in the year 1996, the workman refrained from his duty for a period of 250 days till 6-9-96 and a notice dated 3-9-96 was served upon him which was received by him on 6-9-96. It directs to the workman that it has been observed that you are absenting from duty unauthorisedly since 7-11-94. This notice, it has been argued on behalf of the non-applicant management, remained unrepudiated on the part of the workman and its was followed by the termination order Ex. W-1 dated 15-11-96.

18. Such circumstances fulfil the requirement of the clause 17 of Bipartite Settlement dated 10-4-89 as well as the circular dated 2-11-89. Clause 18(3) reads out that where there is absence from the duty without any intimation, clause 17 of the settlement will apply. Now, it was the bounden duty of the workman to show that after the receipt of the notice, he had assigned the reasons of his absence from the duty or that he had earlier proceeded on leave after obtaining the due sanction or that even he had intimated to the concerned authorities the ground of his absence from the duty.

19. On behalf of the workman, 16 letters have been submitted on the record which have been addressed to the non-applicant management in the form of the representations. These representations are Ex. W-2 dated 21-12-96; Ex. W-5 dated 13-1-97; Ex. W-6 is a telegram dated 19-11-96 and a letter dated 1-2-97; Ex. W-7 dated 10-2-97; Ex. W-8 dated 17-3-97; Ex. W-9 dated 11-4-97; Ex. W-10 dated 11-5-97; Ex. W-11 dated 16-6-97; Ex. W-12 dated 16-8-97; Ex. W-13 dated 20-10-97 and Ex. W-14 dated 11-8-98.

20. This manifest that all these representations were transmitted to the non-applicant management after the termination order dated 15-11-96 was issued. Similarly, the workman has also submitted two medical certificates Ex

W-3 and W-4, which pertains to the period of his illness from 13-9-96 to 14-9-96 and 15-9-96 to 18-11-96 respectively. At the most, it can be stated that the workman could be able to show a good ground of his absence of the period ranging from 13-9-96 to 18-11-96. But the notice dated 3-9-96 deals with the period prior to the aforesaid period. Moreover, the workman in his cross-examination has admitted that in the period shown at para 2 of the written statement, he remained on leave. Although he has stated that he had filed the application for the grant of the leave, but he could not be able to file the copies thereof in support of his deposition. Therefore, it is an admitted fact that the workman was not on duty in the period referred above.

21. Thus, the aforesaid facts clearly show that the workman remained on unauthorized leave for a period of 250 days in the year 1996 till 6-9-96 and the management has fully complied with the requirements under clause 18(3) of the circular dated 2-11-89 and clause 17 of the Bipartite Settlement dated 10-4-89, which govern the service conditions of the employees working with the non-applicant management and which was binding upon both the parties in the dispute.

22. It may also be mentioned here that the circulars Ex. M-2 dated 16-8-88 and Ex. M-3 dated 6-7-89 laying down the procedure in case of the unauthorized absence of the employees were issued prior to the coming into the force of the Bipartite Settlement and circular dated 2-11-89. Therefore, the non-applicant management is required to take the steps, under these circumstances, in accordance with the circular dated 2-11-89 and the Bipartite Settlement dated 10-4-89. Thus, the procedure laid down under Ex. M-2 and Ex. M-3, no more survives on coming into the force of the circular dated 2-11-89 along with the Bipartite Settlement dated 10-4-89.

23. In support of his contention, the Id. representative for the non-applicants has referred to before me AIR 2000 SC 2198, the facts thereof are that the service of the employee was terminated on account of his unauthorized absence from the duty and the bank management had served the notices on the delinquent calling upon him to report on duty. But despite obtaining the notices issued to him, the delinquent did not respond to the notices and the bank management had treated him to have voluntarily retired from the service. The Tribunal as well as the Hon'ble High Court set aside the order of termination from the service on the ground of absence of notice to delinquent and a direction was issued to reinstate him. In appeal, the Hon'ble Apex Court set aside the order of the High Court. The facts of the referred case are squarely applicable to the instant dispute where in the unauthorized absence of the workman from his duty and serving upon him with the notice by the non-applicant management are amply found to be proved.

24. Contrary to it, the ld. representative for the workman has cited before me the following judicial decisions which are discussed hereunder :—

25. **1988 AIR SCW 1447** :—In this case, the service of the employee was terminated in accordance with clause 17(g) of the Certified Standing Orders. The Hon'ble Court has held that any clause in the Certified Standing Orders providing for automatic termination of service of a permanent employee would be bad if it does not purport to provide an opportunity of hearing to the employee whose services are treated to have come to an end automatically. But in the present case, both parties have entered into a settlement and they are governed by the clauses of the settlement.

26. **2002 Lab IC Supreme Court 2968** :—In this case, under the standing orders for unauthorized absence for 10 consecutive days, the service of the employee could be automatically terminated. But the absenting employee informed on 4th day of his absence that he will report back on duty in 48 hours. A warning was issued to him that if he fails, his name would be struck off from the rolls and another letter was issued to him after 10 days of his absence intimating him that his name has been struck off. It was held by the Hon'ble Court that the letter issued on the 4th day of leave cannot be treated as an opportunity of hearing to the employee.

27. In the instant dispute, a notice dated 3-9-96 was issued to the workman stating clearly his period of absence and to report on duty, which stood unexpired on behalf of the workman.

28. **2000 (85) FLR Allahabad 640** :—In this case, the show-cause notice was not served upon the petitioner and the dismissal was based on the ground of unauthorized absence from the duty. It was held that the employee was dismissed without affording him an opportunity of hearing. As is evident, the facts of the reported case are entirely distinct from the instant dispute and the workman was afforded with an opportunity of hearing by way of issuing a notice to him.

29. **2001 (88) FLR Chhattisgarh High Court 420** :—In this case, the Hon'ble Court has held that in the absence of any statutory rules, the principles of natural justice should be followed and the petitioner was entitled to get the notice and an opportunity of hearing before termination of his service. But in the present case, as mentioned above, both the parties are governed by the Bipartite Settlement and the notice was served upon the workman.

30. The brief facts of the referred judicial decisions on behalf of the workman as exhibited supra manifest that

their facts are distinguishable from the facts involved in the present case and the ld. representative for the workman does not find any assistance from them. On the basis of the foregoing reasons, issue no. 1 and 2 are decided against the workman.

ISSUE No. 3

31. As a result of the finding on issue no. 1 & 2 against the workman, he is not entitled to be reinstated in the service. This issue is accordingly decided against the workman.

ISSUE No. 4

32. The ld. representative for the non-applicants submits that the workman has belatedly raised the dispute and on the ground of delay, his claim deserves to be rejected. It has been opposed on behalf of the workman.

33. On a perusal of failure report submitted by the Assistant Labour Commissioner Ex. W-15, it appears that the workman has raised this dispute on 26-8-98 before the Assistant Labour Commissioner. It further appears that the workman had even filed his representation Ex. W-14 before the non-applicant management to reinstate him in the service and when he could not be successful, then he raised this dispute before the Assistant Labour Commissioner. The delay caused in raising the dispute after the termination of his service w.e.f. 15-11-96 has thus been explained on behalf of the workman and in view of the judicial pronouncement cited in 1999 AIR SCW 1051 & RLR 2002 (2) 336, the provisions of the Limitation Act are not applicable to the proceedings under the Industrial Disputes Act and the relief under it cannot be denied to the workman merely on the ground of the delay. Therefore, this issue is clinched in favour of the workman and against the non-applicants.

ISSUE No. 5 & 6

34. The burden to prove these issues rest upon the non-applicants. The ld. representative for the non-applicants do not press them.

35. On the basis of the foregoing reasons, the reference is answered in the negative and it is adjudicated that the workman could not be able to prove his claim which deserves to be disallowed. An award is passed accordingly.

36. Let a copy of the award be sent to the Central Government for publication under Rule 17(1) of the Act.

R.C. SHARMA, Presiding Officer

नई दिल्ली, 6 मई, 2003

का. आ. 1568.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रिजर्व बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-कम-लेवर कोर्ट, जयपुर के पंचाट (संदर्भ संख्या केस नं. सीजीआईटी-60/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-5-2003 को प्राप्त हुआ था।

[सं. एल-12012/271/2001-आई.आर. (बी-1)]
अजय कुमार, डैस्क अधिकारी

New Delhi, the 6th May, 2003

S. O. 1568.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Case No. CGIT-60/2000) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Reserve Bank of India and their workman, which was received by the Central Government on 5-5-2003.

[No. L-12012/271/2001-IR(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

CASE NO. CGIT-60/2000

Reference No. I. 12012/271/2001-IR(B-I)

The Secretary,
Reserve Bank Employees Association,
Through R.B.I., Tonk Road,
Rambag Circle, Jaipur. Applicant
Association

Versus

The Regional Director
Chief General Manager,
Reserve Bank of India,
Tonk Road,
Rambagh Circle, Jaipur Non-applicant

PRESENT

Presiding Officer : Sh. R. C. Sharma.
For the applicant : Sh. R. C. Jain.
For the non-applicant : Sh. L. K. Sharma.
Date of award : 2-4-2003

AWARD

1. The Central Government under clause D of Sub-section 1 and Sub-section 2(A) of Section 10 of the

Industrial Disputes Act (hereinafter referred to as the Act) has referred the following industrial dispute for adjudication to this Tribunal which runs as under :—

"Whether the action of the Management of Reserve Bank of India, Jaipur of not granting advance increment to Shri Naval Kishore Gupta, Coin-Note Examiner after passing his graduation from the year 1997 is justified ? If not, what relief the workman is entitled and from which date ?"

2. It transpires from the perusal of the statement of claim submitted by the applicant-association that the workman Sh. Naval Kishore Gupta was appointed in the non-applicant establishment on 15-2-84 on the post of the clerk/coin-note examiner Gr. II, who passed his graduation examination w.e.f. 5-7-95 but he was not granted the two advance increments which are admissible as per the bipartite settlement between both the parties. It has been averred that there is no provision in the said bipartite settlement that when an employee reaches at the maximum of the pay-scale, then on passing the graduation examination, he would not be granted two advance increments, therefore, as per the principles of natural justice, even if an employee reaches at the maximum of the pay-scale then at this stage on passing the graduation examination, he should be granted the increments as per the bipartite settlement.

3. Opposing the claim, the non-applicant in its written statement has averred that since the settlement between both the parties executed in the year 1970, it was provided that two increments/special pay were to be given to the graduates in the pay-scale, which was followed in the subsequent settlements executed in the years 1979, 1989, 1995 and 1997. As per the averment of the non-applicant, the relevant settlement pertains to the year 1995 and it has been further averred that Sh. Gupta became graduate in 1997 when he had already reached the maximum of the pay-scale of clerk/coin-note examiner Gr. II and, therefore, as per the settlement he could not become eligible for any further increment in the pay-scale. It has also been stated that the claimant is being provided the personal allowance as well as the fixed personal allowance and on these grounds, the non-applicant has stated that the workman is not entitled to get the two advance increments as prayed by the association.

4. On the basis of the pleadings of both the parties, the following points for determination were framed :—

(i) Whether the applicant-workman is entitled to get the advance increment/special pay from the date 5-7-1997 on passing his graduation examination and is also entitled to get the arrear of the advance increment/special pay?

(ii) Relief.

5. In the evidence, the applicant-association has examined the workman Sh. Naval Kishore Gupta and on behalf of the non-applicant, the affidavit of Sh. Takhat Singh Santla, Assistant General Manager has been submitted.

6. I have heard both the parties and have gone through the record.

7. The Ld. representative for the workman submits that as per the bipartite settlement Ex. M/4, which is relied upon by both the parties, the workman is entitled to get the two advance increments even on passing the graduation examination when he had already reached at the maximum of the pay-scale. His submission is that no such condition is provided in the settlement that on reaching the maximum of the pay-scale and thereafter passing the graduation examination, advance increments would not be admissible to him.

8. Arguing contra, the Ld. representative for the non-applicant contends that the workman is not entitled for advance increments in the pay-scale as he has already reached the maximum and as per the settlement, employees are granted two increments on becoming graduates subject to the condition that the candidate has not reached the maximum of the pay-scale and, since the workman has already reached the maximum of the pay-scale before becoming graduate, he could not be granted any further increment in the pay-scale. He further contends that when the employee had already reached the maximum of pay-scale, he would be eligible for post-scale special pay for attaining the qualification of graduation and the settlement also provides for personal allowance and fixed personal allowance after one year of reaching the maximum of the pay-scale. In support of his contention, he has relied upon the memorandum of instructions Ex. M/6 issued by the management.

9. I have bestowed my thoughtful consideration to the rival contentions and have perused the judicial verdict referred to by the workman.

10. It has not been disputed that the workman Sh. Naval Kishor Gupta has passed his graduation examination on reaching the maximum of the pay-scale. The relevant bipartite settlement is Ex. M/4 which is relied upon by both the parties. Clause A of the settlement states as under :—

"Advance Increments : The existing provisions for grant of advance increments for graduation, CAIIB/ CAIB, AMIP, D Pharm, Ph. D. degree etc. shall continue."

11. Further this settlement also contains the following provision on reaching the maximum of the pay-scale :—

"After reaching the maximum of the revised pay-scale as and from 1st November, 1992, an employee will be eligible for special pay as under subject to the entitlement at below :

Rs. 120/- After 1 year

Rs. 240/- After 2 years"

12. In the memorandum of instructions Ex. M/6, which is issued by the non-applicant management, para 6.2 at

page 3 deals with the personal allowance and para 21.1(a) at page 11 deals with the fixed personal allowance which are reproduced as below respectively :—

"Para 6.2 : While a personal allowance of Rs. 440/- p.m. will be granted in the revised scale to all existing employees in Groups A, B, C and D, drawing pay at the maximum of the existing scale of pay, as shown in the Charts, in respect of employees reaching maximum of the revised scale (i.e. Rs. 6285/-) after 22nd June 1995, the said personal allowance of Rs. 440/- will be granted to them on completion of one year after their so reaching the maximum of the revised scale. Out of the personal allowance of Rs. 440, Rs. 325/- shall rank for Provident Fund/Pension and Gratuity."

"Para 21.1 (a) : Fixed Personal Allowance now stands revised to Rs. 348/-w.e.f. 1st November 1993. Besides, Fixed Personal Allowance will now be payable to employees who would draw pay at the maximum of the revised scale (i.e. Rs. 6285/-) or above as on 1st November 1993. Out of this allowance, Rs. 325 shall rank for PF/Pension and Gratuity."

13. It has been contended on behalf of the applicant-association that there is no condition in Ex. M/4 that after reaching at the maximum of the pay-scale and on becoming graduate subsequent thereto, the employee shall not be eligible for the two advance increments. The Ld. representative for the non-applicant has tried to controvert this argument by making his submission that the workman on reaching at the maximum of the pay-scale was given special pay of Rs. 120/- after one year and Rs. 240/- after two years as per the norm of the settlement Ex. M/4 and he has been further allowed the personal allowance and the fixed personal allowance in view of the memorandum of instructions Ex. M/6 and therefore, he is not entitled to get the two advance increments on becoming graduate while he had already reached at the maximum of the pay-scale.

14. At first, it is to be ascertained that whether such bar is contained in the settlement Ex. M/4 which governs both the parties. I have carefully gone through the clauses of the settlement but no such provision has been enshrined therein which speaks of the restriction imposed upon the candidate for grant of the two advance increments in case he passes his graduation examination after reaching at the maximum of the pay-scale. Thus, argument advanced on behalf of the management is not tenable in view of the settlement Ex. M/4.

15. It is also to be considered as to whether the special pay of Rs. 120/- after completion of one year and of Rs. 240/- after the completion of two years as well as the personal allowance and the fixed personal allowance granted to the workman were allowed to him in lieu of the two advance increments which were otherwise admissible to him on passing the graduation examination. The settlement Ex. M/4 does not indicate that on reaching the maximum of the pay-scale and thereafter on becoming graduate, an employee would only be eligible for the special

pay of Rs. 120/- and Rs. 240/- respectively. This special pay and the personal allowance as well as the fixed personal allowance, on a close scrutiny of the documents adduced by the non-applicant management, seem to be admissible to the candidates on account of his reaching at the maximum of the pay-scale and when the workman reached at the maximum of the pay-scale, he became eligible for these benefits, which were granted to him accordingly. They have no direct nexus with the two advance increments which are admissible to a candidate on becoming graduate as indicated by the settlement Ex. M/4. Since the workman had acquired the further qualification of graduation during his continuation in service, he becomes entitled for the grant of the two advance increments as per the clause of the settlement Ex. M/4 exhibited supra, even if he has reached at the maximum of the pay-scale.

16. The special pay as mentioned above as well as personal allowance and fixed personal allowance are admissible to all those employees who have reached the maximum of the pay-scale, but the two advance increments shown in clause A of the settlement Ex. M/4 is only admissible to a candidate on becoming a graduate. Since the workman fulfils the condition of passing the graduation examination, his entitlement to two advance increments cannot be denied by the non-applicant management in view of the clause mentioned in Ex. M/4.

17. It has also been argued on behalf of the non-applicant that the memorandum of instructions Ex. M/6 has been prepared and issued to clarify some of the provisions of the settlement which were felt necessary with a view to facilitate implementation thereof and in the light of this memorandum, the workman is not entitled to get the two advance increments on passing his graduation examination when he had already reached at the maximum of the pay-scale. The Ld. representative for the workman has opposed this submission and has relied upon the decision cited in 1999(I) LLJ SC 849.

18. In the decision supra, the Hon'ble Supreme Court has observed that the benefits to the workman available under the settlement cannot be withdrawn by the State Govt. by issuing its orders. In the light of this observation, even if it is presumed that memorandum of instructions Ex. M/6 does not afford that two advance increments would be admissible to the candidate on becoming the graduate, even after reaching at the maximum of the pay-scale, this submission cannot be accepted on account of the existing clause A mentioned in the settlement Ex. M/4. The memorandum of instructions issued by the non-applicant management is not a settlement executed between the concerned parties, but it is simply a unilateral order issued on behalf of the non-applicant management which cannot override the clauses contained in the settlement executed between both the parties and which has the binding effect over them. Accordingly, the submission made on behalf of the non-applicant management is found to be without merit.

and the objection raised by the Ld. representative for the applicant-association against the effect of memorandum of instructions as against the settlement Ex. M/4 finds support from the decision referred to by him.

19. On the basis of the foregoing reasons, the reference is answered in the affirmative in favour of the applicant-association and against the non-applicant and it is held that the action of the management of the non-applicant of not granting the advance increments to the workman Sh. Naval Kishore Gupta on passing his graduation from the year 1997 is unjustified and the applicant-association has been able to prove the claim made on behalf of the workman which is allowed and it is declared that the workman is entitled to get the two advance increments as per the clause A in Ex. M/4 w.e.f. the date of passing his graduation examination i.e. 5-7-1997. An award is passed accordingly. Let a copy of the award be forwarded to the Central Govt. for publication under Section 17(1) of the Act.

R. C. SHARMA, Presiding Officer

नई दिल्ली, 6 मई, 2003

का. आ. 1569.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भूलधार क्षेत्रीय ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण-कम-लेबर कोर्ट, जयपुर के पंचाट (संदर्भ संख्या सीजीआईटी-62/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-5-2003 को प्राप्त हुआ था।

[सं. एल-12012/273/2000-आई.आर.(बी-1)]
अजय कुमार, डैस्क अधिकारी

New Delhi, the 6th May, 2003

S.O. 1569.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Case No. CGIT-62/2000) of the Central Government Industrial Tribunal, Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Marudhar Kshetriya Gramin Bank and their workman, which was received by the Central Government on 5-5-2003.

[No. L-12012/273/2000-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT JINDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

CASE No. CGIT-62/2000

Reference No. L—12012/273/2000-IR(B-I)

Sh. Mahendra Kumar
S/o Sh. Banna Ram,
R/o Satyu, Tehsil Taragarh,
Distt. Churu (Raj.) 331001.

... Applicant

Versus

1. The Chairman,
Marudhar Kshetriya Gramin Bank,
Station Road, Churu Distt. (Raj.) 331 001
2. The Branch Manager,
Marudhar Kshetriya Gramin Bank,
Branch Satyu, Tehsil Taranagar,
Distt. Churu (Raj.) 331 001. . . Non-applicants

PRESENT:**Presiding Officer : Sh. R. C. Sharma.**

| | |
|-------------------------|-----------|
| For the applicant : | None. |
| For the non-applicant : | None. |
| Date of award : | 26-3-2003 |

AWARD

1. The Central Government under Clause D of Sub-section 1 and Sub-section 2(A) of Section 10 of the Industrial Disputes Act 1947 (for short, the Act) has referred the following dispute for adjudication to this Tribunal which runs as under :—

“Whether the action of the Chairman, Marudhar Gramin Bank, Head Office, Station Road, Churu in terminating the services of Shri Mahendra Kumar S/o Banna Ram was justified ? If not, what relief the workman is entitled and from what date ?”

2. In the statement of claim, the applicant-workman has averred that he was employed by the non-applicant on 20-8-95 on the post of the 4th Class on daily wages who worked up to 14-5-97, but his service was terminated w.e.f. 15-5-97. It has been further alleged on his behalf that his service was terminated in violation of the provision contained under Section 25-F of the Act and the junior employees to him are still working.

3. Resisting the claim, the non-applicant in his written statement has denied that the workman was ever employed by him and that the junior employees are working with the non-applicant management. The non-applicant has averred that the workman was assigned the work of cleaning the premises and distribution of the official letters, for which the payment was made to him.

4. On the pleadings of the parties, the following points for determination were framed by the Tribunal :—

- (1) आया प्रार्थी ने दिनांक 20-8-95 से 15-5-97 तक लगातार चतुर्थ श्रेणी कर्मचारी के पद पर दैनिक वेतन पर कार्य किया ?
- (2) आया प्रार्थी को सेवा समाप्ति अधिनियम 1947 की धारा 25 एफ, जी के प्रावधानों का उल्लंघन कर को गई ?
- (3) प्रार्थी किस सहायता को प्राप्त करने का अधिकारी है ?

5. In support of the claim, workman has not adduced the evidence and since 15-1-2003, both parties have kept

abstaining from putting their appearance in the Tribunal.

6. On the basis of the facts and circumstances stated above, it seems that the workman is not willing to further contest the claim presented by him and under these circumstances, a “No Dispute Award” is passed accordingly.

7. Let a copy of the award may be forwarded to the Central Government for publication under Section 17(1) of the Act.

R. C. SHARMA, Presiding Officer

नई दिल्ली, 7 मई, 2003

का. आ. 1570.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार वेस्टर्न रेलवे, मुम्बई के प्रबंधांत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-21/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-5-2003 को प्राप्त हुआ था।

[सं. एल-41011/21/97-आई.आर. (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 7th May, 2003

S.O. 1570.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-21/1998) of the Central Government Industrial Tribunal, No. I, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Western Railway, Mumbai and their workman, which was received by the Central Government on 6-5-2003.

[No. L-41011/21/97-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, MUMBAI****PRESENT:**

Shri Justice S. C. Pandey,
Presiding Officer

REFERENCE NO. CGIT 21/1998

PARTIES: Employers in relation to the management of Western Railway, Mumbai

AND

Their Workmen

APPEARANCES:

For the Management : Ms. Fernandes, Adv.

For the Workman : Mr. B.M. Shukla, Gen Secy.
 State : Maharashtra
 Mumbai, dated the 26th day of March, 2003

AWARD

1. This is a reference made by the Central Govt. under clause (d) of Sub-section 1 read with section 2(A) of Section 10 of the Industrial Disputes Act, 1947. The terms of reference are as follows :

"Whether the action of the employer in not granting officiating allowance to the workman working under the control of Sr. DSTE (C) W. Rly., Bombay Division is legal and justified. If not to what relief the workman is entitled?"

2. Shri B.M. Shukla who had filed the statement of claim on behalf of the workman in the capacity Secretary of Indian Railways Technical Staff Association (IRTSA) has filed an application to that the grievances of the workman invaluable in this reference do not survive due to lapse of time. It appears that earlier this tribunal by order dated 30/9/1998 had disposed of this reference saying the dispute could not be adjudicated upon in absence of the Union. The award was set aside by this tribunal at the instance of the Union.

3. Now since the Union does not want to contest the dispute, this reference is liable to disposed by saying that it is not possible to adjudicate upon this reference. Apparently, by lapse of time the dispute does not survive. Accordingly this reference is disposed of. Let the application filed by Shri B.M. Shukla be part of the record of this case.

S. C. PANDEY, Presiding Officer

नई दिल्ली, 7 मई, 2003

का. आ. 1571.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टिस्को के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 94/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-05-2003 को प्राप्त हुआ था।

[सं. एल-20012/210/95-आई. आर. (सी-I)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 7th May, 2003

S.O. 1571.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 94/1996)

of the Central Government Industrial Tribunal II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Tisco and their workman, which was received by the Central Government on 5-05-2003.

[No. L-20012/210/95-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD****PRESENT**

Shri B. Biswas,
 Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act, 1947

Reference No. 94 of 1996

PARTIES:

Employers in relation to the management of Jamadoba Colliery of M/s. Tisco Ltd. and their workman.

APPEARANCES:

On behalf of the workman : None.

On behalf of the employers : Shri D. K. Verma, Advocate.

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 23rd April, 2003

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947, has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/210/95-IR (Coal I) dated, the 3rd September, 1996.

SCHEDULE

"Whether the action of the management in not providing employment to the dependent of Shri Nageshwar, Miner is justified? If not, to what relief is the said workman entitled?"

2. The case of the concerned workman according to the W.S. submitted by him in brief is as follows :—

He submitted that he was appointed at 6 & 7 Pits Colliery as Miner by the management on 16-6-66. On

8-6-92 he fell ill and for which he had to undergo treatment at Colliery Hospital. But inspite of that treatment he became seriously ill and for which he was admitted at Central Hospital for his further treatment where it was diagnosed that he was suffering from cancer. He disclosed that inspite of declaring him as cancer patient and also unfit for service the medical officer recommended in the prescription to remain on long sick leave, knowing fully well that he was not in a position to continue his service any more. He alleged that such remarks was passed by the doctor under control of the management only to deprive him from getting the benefit of a cancer patient. He disclosed that the doctors did not declare him medically unfit as his date of superannuation from service was 4-11-92. He submitted that inspite of submitting several representations the management ignored his prayer to declare him unfit for service intentionally violating the principle of natural justice and thereby deprived him to place his claim for employment of his second son as per the rules of the management. The management also deprived him to get all extra monetary benefits which a cancer patient is entitled to get.

3. Accordingly, he has submitted prayer to pass award directing the management to provide employment to his dependent son with other monetary benefits.

4. Management on the contrary after filing W.S.-cum-rejoinder have denied all the claims and allegations which the concerned workman asserted in the W.S.

5. They submitted that the concerned workman was employed on 22-6-61 and his date of birth was 4-11-32. He was superannuated from his service with effect from 4-11-92 after attaining his age of 60 years. They disclosed that during service period he got one of his dependent employed on the strength of his service. Therefore, there was no scope for employment of another dependent is his place on the strength of his service after his retirement. They disclosed that the concerned workman was medically examined on 16-6-92 when he complained difficulties in performance of his duties. He was declared to be a patient of "Myeloid Leukemia". the medical examination was for his consideration for providing employment beyond completion of the age of superannuation. As the concerned workman could not be found suitable for extension of his service beyond 60 years of age he was not granted any extension and he was superannuated after completion of 60 years of age on 4-11-92. They submitted that as per the employment procedure of the company one dependent is provided employment and for which no other dependent is considered for his employment on the strength of the service of an employee. They disclosed that in the instant case the son-in-law of the concerned workman got employment as his dependent and for which his son is debarred from placing claim for employment subsequently. They also submitted that in case of any serious disease, temporary appointment is given to the dependent of an employee to the maximum period of 18 months to provide relief to the suffering employee. In case of any dependent

is already in employment, no temporary appointment is provided to a second dependent of the employee. Disclosing the norms and procedure of the management they submitted that the claim of the concerned workman was without any merit. They denied the facts of taking any arbitrary or illegal decision in refusing the claim of the concerned workman. Accordingly, they submitted prayer for passing award rejecting the claim of the concerned workman.

5. The points to be decided in this reference are :—

"Whether the action of the management in not providing employment to the dependent of Shri Nageshwar, Miner is justified ? If not, to what relief is the said workman entitled?"

FINDING WITH REASONS

6. It transpires from the record that the management in support of their claim have examined one witness while the concerned workman in spite of getting ample opportunities did not consider necessary to examine any witness in order to substantiate his claim.

7. Considering the facts disclosed in the pleadings of both sides as well as of the evidence of MW-1. I find no dispute to hold that the concerned workman got his employment as miner at 6 and 7 pit colliery on 22-6-61 and his date of birth was 4-11-32. It is admitted fact that date of superannuation of the concerned workman from his service on attaining the age of 60 years was 4-11-92.

8. It is the contention of the concerned workman that on 8-6-92 he suddenly fell ill and for which he had to remain under treatment at colliery hospital but as his ailment aggravated he was admitted in the Central Hospital on 16-6-92, where he was detected as a cancer patient. He alleged that inspite of such detection the management neither declared him unfit for service nor provided any employment to his dependent son. On the contrary management asked him to go on leave being advised by the medical officer. He alleged that such act on the part of the management was not only arbitrary but also illegal. He further disclosed that the management intentionally committed such mischief as he was on the verge of his superannuation from service on 4-11-92 on the contrary from the submission of the management a different picture comes in. Management submitted that as per service condition the concerned workman was allowed to enroll the name of one of his dependent in the company's Dependent Register on completion of his 15 years of service in view of petition filed by him. Copy of the said petition submitted by the management in course of evidence of MW-1 was marked as Ext. M-1 which definitely has supported the claim of the management. They submission further that in view of the said petition and as per option given by the concerned workman his son-in-law was given employment and he is still in service. The service particulars of the son-in-law

the concerned workman during evidence of MW-1 had been marked as Ext.M-3 while declaration given by the concerned workman to provide employment to his son-in-law was marked as Ext. M-2. It is seen that the concerned workman concealed this fact in the W.S. submitted by him.

9. Management submitted that as per the norms of the company a permanent workman who has rendered 15 years of service is entitled to enroll his name of one of his dependent for his future employment and following the same principle employment was given to the son-in-law of the concerned workman. They submitted further that as per provision there is no scope to provide employment of another dependent of the workman while employment of one dependent was given.

10. They disclosed that as the date of superannuation of the concerned workman on his attaining age of 60 years was on 4-11-92 he was sent to Medical Board on 16-6-92 for his medical examination to consider for his employment beyond completion of the age of superannuation. After medical examination it was detected that the concerned workman was suffering from "Myeloid Leukemia", and accordingly he was declared unfit for extension of service. The medical report during evidence of MW-1 was marked as Ext. M-4. From the documents marked as Ext. M-5 it transpires that in view of the medical report the General Manager advised the concerned workman to avail the leave to his credit before he is superannuated from his service with effect from 4-11-92. It transpires that only five months before the date of his superannuation it was detected that the concerned workman was suffering from "Myeloid Leukemia." It is seen that as the management had intention to extend his service period beyond the date of superannuation he was placed before the Medical Board for his medical test of fitness but he was declared unfit as he was detected a cancer patient. There is reason to believe that as extension of service to a concern patient could not be given he was advised to go on leave as he was scheduled to be superannuated from service with effect from 4-11-92. It is the specific allegation of the concerned workman that intentionally the management has deprived him from his legitimate claim.

11. His first claim was for employment of his dependent son and his second claim is in respect

of monetary benefit which he could avail if his service was extended. Management could not consider enhancement of service on health ground as he was a cancer patient. I do not find any reason to believe that the management intentionally deprived the concerned workman from such benefit. As per norms and procedure of the company one dependant of a workman is eligible to get employment subject to fulfilment of certain terms and conditions. In the instant case it is seen that the management provided employment to the son-in-law of the concerned workman on his prayer. Therefore, there is no scope to say that management ignored his claim. It is the contention of the management that during entire service life of an employee, there is provision for employment of his dependent if his name is enrolled in the company's dependent region. They submitted that as there is no provision for employment of the second dependent it was not possible on their part to consider to his demand and for which his such prayer could not be considered.

12. It is seen that the concerned workman suppressing the fact of employment of the son-in-law has submitted his demand for employment of his another son which I consider is absolutely unjust and improper. The employees dependent register is maintained to provide employment for the benefit of the workman. It is not expected that company is liable to concede to the demand of the workman violating the existing norms and procedure which has been created for the interest and benefit of all workmen of the company. Accordingly, there is no reason to believe that the management acted intentionally in refuting his claim.

Accordingly, after careful consideration of all the facts and circumstances I hold that the concerned workman has failed to justify his claim and for which he is not entitled to get any relief according to his prayer.

13. In the result, the following Award is rendered:—

"The action of the management in not providing employment to the dependent of Shri Nageshwar, Miner is justified. consequently, the concerned workman is not entitled to get any relief."

B. BISWAS, Presiding Officer

नई दिल्ली, 7 मई, 2003

का. आ. 1572.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध वियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II, धनबाद के पंचाट (संदर्भ संख्या 24/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-5-2003 को प्राप्त हुआ था।

[सं. एल-20012/75/95-आई.आर. (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 7th May, 2003

S.O. 1572.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 24/96) of the Central Government Industrial Tribunal-II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 5-5-2003.

[No. L-20012/75/95-IR (C-I)
S. S. GUPTA, Under Secy.]

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, (NO. 2) AT DHANBAD

PRESENT:

SHRI B. BISWAS,
Presiding Officer

In the matter of an Industrial Dispute under Sec. 10 (1) (d) of the I.D. Act, 1947.

REFERENCE NO. 24 OF 1996

Parties : Employers in relation to the Management of Washerries Construction Division of M/s. B.C.C.L. and their workman.

APPEARANCES:

On behalf of the workman : Shri B.N. Singh, Advocate

On behalf of the employers : Shri H. Nath, Advocate

State : Jharkhand. Industry : Coal.

Dated, Dhanbad the 2nd April, 2003

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/75/95-I.R. (Coal-I), dated the 29th February, 1996.

SCHEDULE

“Whether the action of the Chief General Manager (CP) Washerries Construction Division of BCCL in denying promotion to Shri Sadanand Oraon as Fitter-cum-Operator is justified ? If not, to what relief the concerned workman is entitled to?”

2. The case of the concerned workman according to W.S. submitted by the sponsoring Union on his behalf in brief is as follows :—

The sponsoring union submitted that the concerned workman was posted at Mohuda Washery as Fitter Helper

Trainee along with many others in Category-II. It is the allegation of the sponsoring union that after working as Fitter Helper in Cat. II for required period though other Fitter Helpers got their promotion as Fitter Operator or Fitter Welder in Cat. V with immediate effect vide office Order No. MAO/Estab/1113 dt. 16-2-91 and posted at different washeries the management deprived the concerned workman from his legitimate claim for getting his promotion in Cat. V inspite of his possessing requisite qualification and experience. They submitted that being satisfied with the performance of the concerned workman local administration of Madhuband washery made several representations to the management for giving his promotion to Category V from 16-2-91. The management did not consider necessary to give any importance to the same. Even representation given by the concerned workman and also by the union for considering his promotion in Cat. V also did not yield any result. As a result they raised an Industrial Dispute before the ALC(C), Dhanbad for conciliation which ultimately resulted reference to this Tribunal for award. It is the specific allegation of the sponsoring union that due to arbitrary decision of the management the concerned workman has been deprived of getting his promotion in Cat. V which was not only illegal but also violated the principle of natural justice.

3. Accordingly, the sponsoring union submitted prayer for passing award directing the management to give promotion to the concerned workman as Fitter-cum-Operator in Cat. V from 16-2-91 at per with his workman figuring in office order dt. 16-2-91 with all consequential benefit.

4. Management on the contrary after filing W.S.-cum-rejoinder have denied all the claims and allegations which the sponsoring union asserted in the Written Statement on behalf of the concerned workman.

5. They submitted that the concerned workman was appointed as Trade Apprentice under the Apprentice Act, 1961 by letter dt. 15-9-86. He was regularised as Fitter Helper in Cat. II with effect from 8-1-89. They submitted that as per cadre scheme formulated by J. B. C. C. I. and circulated through Implementation Instruction Fitter Helpers in Cat. II becomes eligible for consideration of their promotion as Fitter Gr. III in Cat. IV after gaining experience as Fitter Helper in Cat. II for three years. The persons with matriculation certificate with ITI become eligible for consideration of their promotion after completion of 2 years experience as Helpers. They submitted that if any persons works as Mechanical Fitter-cum-Operator, he becomes eligible for his fitment in Cat. V as he performs two kinds of jobs simultaneously. They disclosed that whenever any workman is directly promoted from the post of Helper to the post of Fitter-cum-Operator, he can be promoted to Cat. V from Cat. II. They submitted that the concerned workman is working at Madhuband Coal Washery as Fitter Helper in Cat. II Madhuban Coal Washery was in construction at stage and the operational stage have not been commenced. As such there was no requirement of Operator of the machine for running the same used in the process of

washing coal and for which there was no scope for promotion of the concerned workman to the post of Fitter-cum-Operator due to want of vacancy at that stage. They submitted that the case of the concerned workman may be considered to the extent of promoting him to Cat. IV as Fitter only by the D. P. C. whenever any occasion will arise but there is no scope for considering his promotion to Cat. V directly from the post of Helper in Cat. II. Accordingly, management submitted prayer to pass award rejecting the claim of the concerned workman.

6. The points to be decided in this reference are:—

“Whether the action of the Chief General Manager (CP) Washeries Construction Division of M/s. BCCL in denying promotion to Shri Sadanand Oraon as Fitter-cum-Operator is Justified? If not, to what relief the concerned workman is entitled to?”

FINDING WITH REASONS

7. It transpires from the record that the concerned workman in order to substantiate his claim examined himself as witness in this case while the management inspite of getting opportunity did not examine any witness in support of their claim.

8. Considering the evidence of the concerned workman and also considering the facts disclosed in the pleadings of both sides I find no dispute to hold that the concerned workman joined the office of the management on 9-1-87 as apprentice for a period of one year. After completion of that period his service was regularised as Fitter Helper with effect from 9-1-88 in Cat. I in view of order dt. 13/15-6-88 issued by the management accepting recommendation of D. P. C. The said order during evidence of the management was marked as Ext. W-4. The workman submitted that for the post of Fitter Helper minimum qualification required is Matriculate with I. T. I. pass. This witness during his evidence disclosed that not only he was matriculate but also he passed I. T. I. The matriculation certificate and I. T. I. certificate during his evidence had been marked as Ext. W-1 and W-2 respectively. His apprenticeship certificate was also marked as Ext. W-3. Considering all these certificates there is sufficient reason to say that the concerned workman being a qualified person was selected by D. P. C. for considering his regularisation as Fitter Helper Cat. I. It transpires that as Fitter Helper the concerned workman was posted at Mohuda Colliery. He disclosed relying on the documents marked as Ext. W-4 that Rajendra Choudhury, Fitter Helper was junior to him. One consideration of this list I find support in his claim as because his name as per list while appearing in Sl. No. 7 the name of Rajendra Choudhury is appearing in Sl. No. 57. It is seen that while the concerned workman was posted at Madhuban Washery Rajendra Choudhury was posted at Mohuda Washery. The service of the concerned workman while was regularised on 9-1-88 the service of Rajendra Choudhury as Fitter Helper was regularised on 16-1-88. This witness i.e. the concerned workman disclosed that his

service was regularised in Cat. II with effect from 9-1-89 in view of order passed by the management dt. 30-6-89. (Ext. W-5). He disclosed that the service of Rajendra Choudhury was also regularised in Cat. II Fitter Helper.

9. He alleged that thereafter management promoted Rajendra Choudhury in Cat. V vide order dt. 16-2-91 (Ext. W-6) and thereafter he got his promotion in Cat. VI. He submitted that Awad Kishore Choudhury, Dinesh Pd. Singh and Ghar Bharan Rai were also regularised with him as Fitter Helper in Cat. II and they were junior to him. This witness during his evidence alleged that though these workman were junior to him management regularised their service in Cat. VI ignoring his promotion. Similarly Ganesh Majhi was also as junior to him not only got his promotion in Cat. VI but also he was regularised by the management in Supervisory Grade-C.

10. Referring all these facts the concerned workman submitted that though he was senior to other workman whose names have been mentioned above due to discriminatory decision of the management he was deprived of getting promotion. On the contrary he was superseded by them. I have considered the documents marked as Ext. W-4 to W-8 and I find no dispute to hold that other workmen whose names the concerned workman disclosed were not only junior to him but also they get promotion by order of the management superseding him. It is seen that no opportunity was even given to him to face D. P. C. for getting his promotion in higher grade.

11. On the contrary from the submission of the management it transpires that the concerned workman was posted at Madhuban Washery while it was under constructional stage. As no operation of the said washery started question of requirement of the operator of machine for running the same used in the process of washing coal did not arise and accordingly there was no scope for promotion of the concerned workman to the post of Fitter-cum-Operator. They however, submitted that the concerned workman was allowed to enjoy the scale of Cat. VI as per N. C. W. A. directly from Cat. II considering him stagnation in the said category. In course of hearing argument learned Advocate for the management submitted that as per the provision of N. C. W. A. promotion in cadre post of Fitter Helper is considered unit wise and not area wise. Disclosing this fact management submitted that as no vacancy existed there was no scope to consider promotion of the concerned workman in due course of time and for which he was allowed to enjoy the scale of Cat. VI as he was stagnant in Cat. II.

12. The concerned workman in course of his cross-examination admitted that according to the cadre scheme promotion of workman is considered as unit wise and not area wise to fill up the existing vacancies of the respective unit. He further during his cross-examination admitted that in case of promotion of Fitter Helper trade test is done and on the basis of the result of the Trade Test Fitter Helper is

promoted to the post of Fitter. Fitter is posted in Cat. V and Cat. VI according to merit while promotion to Grade-C i.e. Supervisory Grade is absolutely done on the basis of merit and also adjudging the controlling capacity to subordinate. He admitted that at Madhuban Washery neither any D. P. C. was formed nor any Trade Test was held. Accordingly, no promotion order was passed in the said unit. He however admitted that as he was stagnant in Cat. II management allowed him to enjoy the scale of Cat. VI as he did not get any opportunity for his promotion to Cat. V.

13. Now considering the submission of both sides it is clear that promotion in Cat. V and VI of Fitter is made unit wise and not area wise as per provision of N. C. W. A. on the basis of recommendation of D. P. C. in his coming out successfully in the Trade Test. It is the specific contention of the management that as no vacancy at Madhuban Coal Washery was existed for the post of Fitter Operator in Cat. V in VI there was no scope to form D. P. C. and to conduct Trade Test. The concerned workman in course of hearing has failed to highlight if inspite of existing vacancy the management intentionally did not form D. P. C. for holding Trade Test. National Coal wages agreement is binding upon the workman as it is a Tripartite agreement. Therefore it is to be looked into if the management violating the N. C. W. A. had deprived the concerned workman from his legitimate claim of promotion. As the promotion of Fitter in Cat. V or VI is considered on unit basis and not on area basis there is no scope to hold Trade Test area wise for considering the promotion in question. As per list marked as Ext. W-4 service of as many as 72 workmen were regularised in different category out of which services of 22 workmen were regularised in Cat. I Fitter and they were posted at different washery and projects as it was not possible to give posting of all the workman in one unit. As per admission of the concerned workman it is clear that promotion in Cat. V or VI is considered unit wise and not area wise as per N. C. W. A. Rajendra Choudhury and other were posted at Mahuda Coal Washery while the concerned workman was posted Madhuban Coal Washery. These two washeries are considered as separate unit for which consideration of promotion depended on the existing vacancy of each unit. It has been submitted by the management that as vacancy occurred at Mahuda Coal Washery D. P. C. was formed and Trade Test was held but that question of forming D. P. C. or holding Trade Test did not arise due to non-occurrence of any vacancy at Madhuban Unit and for which there was no scope to consider promotion of the concerned workman. However, as he was stagnant in Cat. II they allowed him to enjoy scale of Cat. VI directly from Cat. II. The concerned workman has made allegation about discriminating policy adopted by the management for giving promotion. In support of his claim he has failed to produce any cogent paper. It is admitted fact that promotion in Cat. V and VI are made unit wise as per provision of N. C. W. A. Naturally the management is debarred from taking any step violating the direction of N. C. W. A. I find no hesitation to say that the

concerned workman was deprived of getting his promotion in due course of time only for his posting at Madhuban Coal Washery as no vacancy existed. On the contrary as vacancy occurred at Mahuda Coal Washery his juniors got the scope of promotion as per recommendation of D. P. C. It is not the case that promotion of the concerned workman was not considered as he failed to qualify in the D. P. C. There is also no reason to hold that the management did not give him promotion intentionally. Considering the submission of both sides, it transpires that hands of the management have been tied with as per Implementation Instruction No. 60 issued by JBCCI and also as per provision of N. C. W. A. Not only the management but also the concerned workman in course of his cross-examination categorically admitted that promotion in Fitter Operator through D. P. C. is done unit wise and not area wise as per provision of N. C. W. A. Accordingly, it is clear that promotion to the post of Fitter Operator in any Unit can be considered if any vacancy exists. Under such circumstances, the management have nothing to do but to abide by the instruction given in N. C. W. A. The concerned workman practically was victimised to the circumstances and promotional policy framed by the J. B. C. C. I. It is seen that though the concerned workman was deprived from getting his promotion there is no scope to say that it was for the arbitrary and illegal act of the management. Management have already allowed the concerned workman to enjoy the pay scale of Cat. VI as he remained in stagnant position. That too was given to him within the ambit of N.C.W.A. Accordingly, after careful consideration of all the facts and circumstances there is sufficient scope to say that until and unless the provision of N.C.W.A. in the matter of considering promotion is reconsidered, the workmen like the concerned workman will deprive of enjoying their legitimate claim and in such cases if juniors supersede the seniors the same will have to be accepted by them.

In view of the facts and circumstances, I therefore hold that the concerned workman is not entitled to get any relief according to his prayer.

In the result the following award is rendered :—

“The action of the Chief General Manager (CP) Washerries Construction Division of M/s. BCCL in denying promotion to Shri Sadanand Oraon as Fitter-cum-Operator is justified. Consequently, the concerned workmen are not entitled to get any relief.”

B. BISWAS. Presiding Officer

नई दिल्ली, 7 मई, 2003

का. आ. 1573.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II,

धनबाद के पंचाट (संदर्भ संख्या 111/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-5-2003 को प्राप्त हुआ था।

[सं. एल-20012/347/94-आई.आर. (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 7th May, 2003

S.O. 1573.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 111/95) of the Central Government Industrial Tribunal II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 5-5-2003.

[No. L-20012/347/94-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, (NO. 2) AT DHANBAD.

PRESENT:

SHRI B. BISWAS,

Presiding Officer

In the matter of an Industrial Dispute under Sec. 10 (1) (d) of the I.D. Act, 1947.

REFERENCE NO. 111 OF 1995

Parties : Employers in relation to the Management of Sijua Area of M/s. B.C.C.L and their workman.

APPEARANCES:

On behalf of the workman : Shri B. B. Pandey,
Advocate

On behalf of the employers : Shri H. Nath,
Advocate

State : Jharkhand. Industry : Coal.

Dated, Dhanbad the 16th April, 2003

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/347/94-I.R. (Coal-I), dated the 30th August, 1995.

SCHEDULE

“Whether the demand of Union for reinstatement of Shri Jagdish Singh, Ex-Tyndal Jamadar of Nichitpur Colliery by the management of Nichitpur Colliery of M/s. BCCL w.e.f. 22-4-91 is justified ? If so, to what relief is the workman entitled ?”

2. The case of the concerned workman according to W.S. submitted by the sponsoring Union on his behalf in brief is as follows :—

The sponsoring union submitted that the concerned workman was Tyndal Jamadar at Nichitpur Colliery. They submitted that the management illegally dismissed the concerned workman from his service over an incident of assault of Sri. D.P. Gaur, Senior Executive Engineer. They submitted that as per charge-sheet a mob of workers numbering 30 to 35 led by Viswanath Kumar came to the office of the manager complaining non-supply of water in

P. N. Section. They were searching for D. P. Gaur, Senior Executive Engineer. They disclosed that in the midst of hot discussion between Viswanath Kumar and Mr. Gaur, said Viswanath Kumar and Jagadishwar Paswan assaulted him. The concerned workman had no manner of involvement in assaulting Mr. Gaur though he was falsely chargesheeted.

3. They submitted that prior to the said incident of assault Sri S. K. Bhattacharya had put O.T. slip before Sri Gaur containing the name of the concerned workman along with others in presence of the said workman. The said slip related to O.T. work dt. 5-10-90 Mr. Gaur enquired why the name of Jagadish Singh i.e. the concerned workman was included particularly when he did not perform any O.T. work. As a result when Sri Bhattacharya struck out his name and for which started shouting which indulged to assault Mr. Gaur and consequent to that alleged incident charge sheet was issued against the concerned workman. They alleged that the facts behind the chargesheet was inconsistent. The motive for assault was started to be non-supply of water which caused agitation in the mind of the workman. Accordingly the other motive i.e. protest raised by Jagadish Singh i.e. the concerned workman over striking out his name from O.T. slip was an after thought story created by the management as the management in course of domestic enquiry proceeding failed to produce that O.T. slip to establish its authenticity. Disclosing this fact the sponsoring union submitted that though there was no case against the concerned workman he was falsely chargesheeted and ultimately was dismissed from his service. They submitted that the concerned workman could not be dismissed from his service for the reason that he joined in the crowd for raising the protest against non-supply of water as nobody else was punished for joining the crowd.

4. They submitted that previously this workman was dismissed by the management from his service but in view of award passed by the Tribunal management reinstated him to his service. They alleged that attitude of the enquiry officer was against the concerned workman for which he did not conduct the enquiry fairly and properly and as a result of which he submitted a perverse report holding the concerned workman guilty. Accordingly they raised an Industrial dispute which ultimately resulted reference to this Tribunal for award. The sponsoring union accordingly submitted their prayer to pass award directing the management to reinstate the concerned workman to his service with backwages and other consequential relief.

5. Management on the contrary after filing W. S.-cum-rejoinder have denied all the claims and allegations which the sponsoring union asserted in their Written statement.

The management submitted that the concerned workman was an employee of Nichitpur colliery. A chargesheet bearing No. 2044/98 dt. 6-10-90 was issued to the concerned workman for committing misconduct. As the reply was not considered satisfactory Sri C. M. Singh, D.P.M Loyabad colliery was appointed by the Disciplinary authority to hold enquiry against him. They submitted that the

concerned workman fully participated in the said enquiry proceedings and fully opportunity was given to him to defend his case. They submitted that the enquiry officer conducted the enquiry proceedings fairly and properly maintaining the principle of natural justice and after completion of the said enquiry proceeding he submitted his report holding the concerned workman guilty to the charges brought against him. Thereafter the Disciplinary Authority considering the report and also considering all other aspects accepted the report and dismissed the concerned workman from his service vide letter No. N/936/91 dt. 21-4-91. Accordingly, management submitted their prayer to pass award rejecting the claim of the sponsoring union to reinstate the concerned workman to his service.

5. The points to be decided in this reference are :—

“Whether the demand of Union for reinstatement of Shri Jagdish Singh, Ex-Tyndal Jamadar of Nichitpur Colliery by the management of Nichitpur Colliery of M/s. BCCL w.e.f. 22-4-91 is justified ? If so, to what relief is the workman entitled ?”

FINDING WITH REASONS

6. It transpires from the record that before taking up hearing of this case hearing on preliminary point i.e. if the domestic enquiry held against the concerned workman by the Enquiry Officer was fair, proper and in accordance with the principle of natural justice or not was taken up for consideration in presence of both sides. After hearing both sides an order to that effect was passed vide order No. 49 dt. 30-7-02 and it was observed clearly that domestic enquiry held against the concerned workman and another workman in view of chargesheet issued against them by the management for committing misconduct was fair, proper and in accordance with the principle of natural justice. Accordingly, at this stage I find no sufficient ground to discuss this issue further.

7. Here the point for consideration is if the charge brought against the concerned workman has been substantially proved by the management or not and if so whether there is any scope to reconsider the quantum of punishment inflicted on the concerned workman according to the provision as laid down U/S. 11A of the I. D. Act.

8. In course of hearing on preliminary point chargesheet which was issued against the concerned workman for committing misconduct was marked as Ext. M-4. From the contents of the chargesheet it transpires that on 6-10-90 at about 9.25 A.M. while Sri D. P. Gaur, Senior Executive Engineer, Nichitpur colliery was engaged in discussing with other officials about routine work at 4 Seam office the concerned workman along with Viswanath Kumar followed by a group of workmen went to his office and started agitating over non supply of water. At that time one workman named Viswanath Kumar started hot discussion with him. At that time of said hot discussion the concerned workman also excited the mob against Sri Gaur for striking out his name from O.T. list. Consequent to that hot discussion and excitement and provocation all of a sudden said Viswanath Kumar assaulted Sri Gaur with a ‘danda’ on his hand. Another workman V. Kumar pushed him and for

which he fell down and sustained injury on his left knee. At that time one Jogeshwar Paswan hurled a piece of stone which struck his head resulting injury. On seeing that incident the manager and some other officials intervened and pushed the crowd out. It is seen that over the said incident on the same day Sri Gaur lodged F.I.R. at Kenduadih P.S. Copy of the F.I.R. during hearing was marked as Ext. 6. It transpires that as reply to the chargesheet given by the concerned workman was not satisfactory the Disciplinary Authority appointed MW-1, C.M. Singh as Enquiry Officer to hold enquiry against the concerned workman and another workman. In course of enquiry proceedings the enquiry officer examined four witnesses on the part of the management, two witnesses on the part of the concerned workman and four witnesses on the part of another chargesheeted workman. Considering the enquiry papers I find no dispute to hold that the enquiry officer conducted the enquiry proceedings in presence of the delinquents and full opportunity was given to them to defend their respective cases. All the management witnesses including the victim i.e. Management witness D. P. Gaur vividly described how the said incident took place and which role was taken by the concerned workman. The concerned workman though in his reply (Ext. W-5) denied the charges brought against him admitted his presence when that incident took place. From the reply given by him it is clear that D. P. Gaur, Senior Executive Engineer was assaulted by some persons and he rushed to the spot for his rescue. During enquiry proceeding the concerned workman with a view to defend his case examined DW-1 and DW-2. These two witnesses during giving their statements before the E.O. admitted the fact of “Hulla-Gulla” in the office of Sri Gaur while they were going to the place of their duty. They also admitted the fact relating to presence of the concerned workman of place of occurrence. Therefore considering the reply given by the concerned workman and considering his statement and statement of his witness I find no dispute to hold that he was very much present at place of occurrence at the relevant time of the incident. The F.I.R (Ext. 6) which was lodged by Sri Gaur also his corroborated this facts.

9. The specific charge which was brought against the concerned workman is that he provoked the mob present in the place of occurrence against Sri Gaur taking the grudge in his mind that Sri Gaur struck out his name from the O.T. list. If the statement of Sri Gaur is taken into consideration there is sufficient reason to believe that not only the concerned workman was present with the mob at place of occurrence but also provoked them against Sri Gaur. Other management witnesses also corroborated the statement of Sri Gaur. Accordingly there is sufficient reason to believe that the concerned workman was a member of that unlawful assembly when Sri Gaur was assaulted by some other workmen. From the defence witness I have failed to find out any incriminating material relying on which there is scope to say that the witnesses on the part of the management gave false statement against the concerned workman. Therefore, the role taken by the concerned workman to excite the mob has well been established. It is seen that a mob of 30/35 persons unlawfully assembled in the office of Sri Gaur and started agitating there for non-supply of water.

There was no reason on the part of the concerned workman to go there but as he had a grudge on Mr. Gaur for striking out his name from O.T. list he considered to raise his grievances against him using that platform and with *mala fide* intention he started shouting there which ignited others to assaulted Sri Gaur. There is reason to believe that if the concerned workman was really sincere he would definitely try to save Sri Gaur from the hands of the mob. It is fact that in his reply he took this plea but has failed to produce any cogent evidence in support of his claim. No incriminating material is forth coming that not only management witnesses but also the victim made false statement before the E.O. against the concerned workman, over his involvement in question. No sufficient material is forthcoming to show that out of grudge or enmity either management issued false chargesheet or the witness of gave false statement against him.

10. Accordingly after careful consideration of all the facts and circumstances I hold that the management have been able to substantiate the charge brought against the concerned workman for committing serious misconduct.

11. It is seen that the Disciplinary Authority considering the report of the enquiry officer and the findings contained therein on the basis of relevant document and evidences was satisfied about the misconduct done by the concerned workman and vide letter No. N/936/91 dt. 22-4-91 dismissed him from his service. In passing the order of dismissal the management observed that the charge levelled against the concerned workman was not only serious in nature but also it was highly subversive of discipline. The order of dismissal of the concerned workman from his service in course of hearing was marked as Ext. M-1. Now the point for consideration is if there is any scope to take any lenient view against that order of dismissal as per Section 11A of the I. D. Act.

12. It is the specific contention of the representative of the concerned workman that the management have failed to substantiate the charge brought against the concerned workman. He further submitted that even if the charge brought against the concerned workman is established it was not so serious which can invite his dismissal from service. Accordingly, there is sufficient scope to alter the order of dismissal invoking the provision of Section 11 A of the I. D. Act.

13. I have already discussed above how the management have been able to substantiate the charge of misconduct brought against the concerned workman. Therefore, I consider it needless to discuss this issue further. Accordingly let me consider if the punishment inflicted on the concerned workman by the management can be modified invoking Sec. 11A. of the I.D. Act.

14. Considering all the materials on record I find no dispute to hold that over an issue which was not of much importance the mob consisting of 30/35 workmen assaulted a senior official of the management while he was very much on duty. It is seen that the said mob took the law in their own hands and assaulted this officer without just and proper cause. This workman also being a member of the said mob provoked them by shouting to meet up his grudge

against the said officer, as he struck out his name from the O.T. list. The matter in dispute could have been settled amicably but they did not consider necessary to do so. Learned Advocate for the management submitted that the offence in question was not only serious in nature but also if it is not strictly dealt with the entire discipline in the colliery will be at stake and in such case it will be extremely difficult to run the administration smoothly for the economic growth of the country. In support of his claim the learned Advocate for the management relied on the decision reported in I LLJ-1992 Page 394 and II LLJ P-827 passed by the Hon'ble High Court Bombay and Punjab and Haryana respectively.

15. In the decision reported in ILLJ/1992 page 394 His Lordship of Bombay High Court observed clearly that "the mere fact that there is an ongoing strike does not confer any immunity upon the workmen from the disciplinary control of the employer. His Lordship further observed that in case of assault it had a direct and rational nexus with the Industrial relations between the employer and the workmen in the establishment, it had a direct connection with the contentment or comfort on the men at work and had a direct and material bearing on the smooth and efficient working of the company.

16. The facts and circumstances of the instant case is quite different from the case reported in I LLJ-1992 P.394. In the instant case there was no strike in the colliery. The issue of assaulting a senior officer of the management was for the supply of water and to meet up one's grudge against the victim over quite a different issue which had no bearing with non-supply of water. The mob of workmen did not consider whether the concerned officer was at fault for non supply of water in question. Without ascertaining this fact they started agitation against him and the concerned workman taking opportunity of the same ignited them which resulted attack on him. The act committed by the concerned workman and also other workmen shows clearly how vindictive they were. They did not hesitate to assault a senior officer ignoring all dignity and humanity. Such indisciplined act committed by them if indulged will definitely ruined the cordial atmosphere of the industry. I therefore, hold that the misconduct which the concerned workman committed is not only serious in nature but also it indulged to ruin the atmosphere of the industry. As such considering the gravity of the offence I do not find any sufficient ground to modify the order of dismissal passed against the concerned workman by the management invoking the provision of Section 11A of the I. D. Act. Accordingly I hold that management was absolutely justified to dismiss the concerned workman from the service and in doing so there is no reason to believe that the management had infringed the principle of natural justice. In the result, the following award is rendered :—

"The demand of Union for reinstatement of Shri Jagdish Singh, Ex-Tyndal Jamadar of Nichitpur Colliery by the management of Nichitpur Colliery of M/s. B.C.C.L. w.e.f. 22-4-91 is not justified. Consequently the concerned workman is not entitled to get any relief."

B. BISWAS, Presiding Officer

नई दिल्ली, 7 मई, 2003

का. आ. 1574.——औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार धा० को० को० लि० के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण II, धनबाद के पंचाट (संदर्भ संख्या 142/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-5-2003 को प्राप्त हुआ था।

[सं. एल-20012/427/94-आई.आर.(सी-I)]
एस० एस० गुप्ता, अवर सचिव

New Delhi, the 7th May, 2003

S.O.1574.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 142/95) of the Central Government Industrial Tribunal II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 5-5-2003.

[No. L-20012/427/94-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO.-II AT DHANBAD

PRESENT

Shri B. Biswas, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act, 1947

REFERENCE NO. 142 OF 1995

PARTIES: Employers in relation to the management of Katras Area of M/s. B.C.C.L. and their workman.

APPEARANCES:

On behalf of the workman : Shri B. N. Singh,
Advocate.

On behalf of the employees : Shri H. Nath, Advocate.

State: Jharkhand. Industry : Coal.

Dhanbad, Dated, the 16th April, 2003

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10 (1) (d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/427/94-I. R. (Coal-I), dated the 18th October, 1995 :—

“ Whether the demand of the Union for reinstatement by the management of Ram Kanali Colliery under Katras area of M/s. BCCL of Shri Ramesh Rajak is

justified ? If so, to what relief is the workman entitled ?”

2. The case of the concerned workman, according to W. S. submitted by the sponsoring union on his behalf in brief is as follows :—

The sponsoring union submitted that the concerned workman who was a scheduled caste got his employment at Ram Kanali Colliery under the management. They submitted that in course of service under the management the concerned workman fell seriously ill and for which he had to remain under treatment in the hospital of the management for a few days. But when he did not get any response to that treatment he had to undergo treatment under Homoeopathic system, for a long period and ultimately in the month of December, 1992 he recovered from his ailment and was advised to report for duty and simultaneously to continue treatment for some time more. They submitted that as per advise of the doctor he submitted application with medical certificate of fitness on 28-12-92 for resumption of his duty but he was not allowed to resume his duties. On the contrary the management terminated him from his service with effect from 9-1-93 illegally, arbitrarily and violating the principle of natural justice though it was very much within the knowledge of the management that his such long absence from duty was not deliberate and intentional. Accordingly the sponsoring union submitted that they raised an industrial dispute for conciliation which ultimately resulted reference to this Tribunal for award. In view of the facts and circumstances stated above the sponsoring union submitted prayer for reinstatement of the concerned workman to his service with all benefits.

3. Management on the contrary after filing W.S.-cum-rejoinder have denied all the claims and allegations which the sponsoring union asserted in their W.S. on behalf of the concerned workman. They submitted that the concerned workman was appointed as a temporary miner/loader for a period of three months. The said temporary appointment was subject to his medical fitness and performance of his satisfactory work. It was stipulated that the concerned workman should put minimum 80% attendance of total working days and also should be capable of giving minimum work load of two tubs of coal fixed per miner/loader. They disclosed that the concerned workman joined to his service vide his appointment letter dated 12/17-11-86 as per term and condition but within the said period of three months as he failed to put 80% of attendance of the total working days and also as he failed to load two tubs of coal which was the minimum work load for him his service was terminated.

4. They submitted that after termination service of the concerned workman he approached further to the management for his employment. They submitted that on compassionate ground his prayer was considered by them

and again they issued appointment letter to him temporarily for the period of three months under previous terms and conditions but again he neither could be able to put his 80% attendance nor during this period could he be able to perform the minimum work load allotted to him. On the contrary he left his service voluntarily from 19-12-88. They submitted that during the said period of three months the concerned workman hardly put 1½ months of service in the month of November and December 1988. They submitted that after a lapse of long period the concerned workman on 28-12-92 approached them to provide with employment. They, however, considered his application and expressed regret to provide him another opportunity to work as miner/loader. They disclosed that on two consecutive occasions, the performance of the concerned workman was not inadequate and was found to be unsuitable for carrying on the duties of miner/loader. It was also observed by them that he was not able to work regularly and was frequently remaining absent during the temporary engagement without permission and he could not put even 80 per cent of attendance required to be put during that temporary period of three months. During the second occasion he suo moto left the employment just after working for 1½ months or so.

5. Accordingly they denied the fact that they illegally terminated the service of the concerned workman violating the principle of natural justice. In view of the facts circumstances stated above the management submitted their prayer to pass order rejecting the claim of the concerned workman.

6. The points to be considered in this reference are:—

"Whether the demand of the Union for reinstatement by the management of Ram Kanali Colliery under Katras Area of M/s. BCCL of Shri Ramesh Rajak is justified ? If so, to what relief is the workman entitled ?"

Findings with reasons :

7. It appears from the record that the sponsoring union and the management have examined one witness each in order to establish their respective claim.

8. It is the claim of the concerned workman that being a member of Scheduled Caste he got his appointment as miner/loader at Ram Kanali Colliery. It has been submitted that after rendering service there for one month he became ill seriously and for which he was treated at Company's hospital for a few days but as that treatment did not yield any result he remained under treatment of Homopath for a long period and recovered from his ailment during the month of December, 1992. Thereafter he came to his place of duty with medical certificate of fitness with a view to resume his duties but the management without allowing

him to resume his duties informed him about his dismissal from service. It is the allegation of the concerned workman that such action of the management was not only illegal and arbitrary but also it violated the principle of natural justice on the ground that management did not give him any opportunity to submit his explanation under which circumstances he had to remain absent for the period in question.

9. On the contrary from the submission of the management I find quite a different picture. It is seen from the document marked as Ext. M-1 that the concerned workman got his order of appointment as miner/loader absolutely on temporary basis and for a period of three months from the date he would join or on 31-3-87 which was earlier. The concerned workman by that order dt. 27-12-86 got his posting at West Mudidih Colliery. Management submitted that as per condition of the appointment letter the concerned workman was liable to load two tubs of coal everyday and he must put 80 per cent attendance during the working period. They alleged that as the concerned workman failed to fulfil the condition his service was terminated. In support of their claim management relied on the letters marked as Ext. M-2. They submitted that thereafter the concerned workman submitted representation for reinstatement to his service which was duly considered by them and to give further opportunity vide letter No. 10659 dt. 11-11-88 a fresh temporary appointment as miner/loader was given to him subject to the condition that during the period in question he must load two tubs of coal and also must put 80 per cent of the attendance. As the concerned workman agreed to fulfil his condition he was posted at Ram Kanali Colliery instead of West Mudidih Colliery for a period of three months. They also by the said letter of appointment reserved the right to terminate the concerned workman from his service before the expiry of three months if his services was found not satisfactory. The letter of appointment marked as Ext. M-3 and M-4 will support the claim of the management. They alleged that thereafter the concerned workman started remaining himself absent from duty with effect from 19-12-88 without prior permission from the management and thereby violated the terms and conditions of his appointment and accordingly he was discharged from his service. The notesheet to that effect prepared by the management during evidence of MW-1 was marked as Ext. M-5. The letter of termination of the concerned workman dt. 31-5-89 marked as Ext. M-6 will speak clearly under which circumstances the services of the concerned workman was terminated.

10. Considering the evidence of MW-1 it transpires clearly that the concerned workman got his appointment as miner/loader temporarily for a period of three months under certain terms and conditions and the management reserved the right to discharge him from his service at any

time before expiry of the period in question if it is found that his service was not satisfactory. It is seen that the concerned workman first got his appointment as miner/loader at West Mudidih Colliery for a period of three months. It transpires that before expiry of that period management was compelled to discharge him from his service as he failed to fulfil the terms and conditions. It is seen that thereafter the concerned workman submitted representation for his reinstatement to his service. Management taking sympathetic view considered his case and again issued letter of appointment strictly on previous terms and condition. This time instead of West Mudidih Colliery he was posted at Ram Kanali Colliery. It transpires that after one month of his joining in the service the concerned workman went on leave without giving any information to the management.

11. It is the contention of the concerned workman that as he fell seriously ill initially he had to remain under treatment at company's hospital for a few days but as he did not get any response to that treatment he had to remain under treatment of a Homoeopathic doctor for a long period and ultimately recovered from his ailment during December, 1992. Thereafter with medical certificate of fitness he came to the place of work with a view to resume his duty but the management not only refused him to join his duty but also informed him about his discharge from service. Considering the submission of the concerned workman it transpires that for his ailment as well as treatment he remained himself absent from duty with effect from 18-12-88 till December, 1992. The concerned workman during his evidence has failed to give any explanation why he did not report this fact to the management. It was the contention of the workman that during initial stage of his ailment he remained under treatment at management's hospital. In support of his claim in course of evidence the concerned workman has failed to produce a single scrap of paper. It is the claim of the concerned workman that as he failed to get any relief there he consulted Homoeopath and remained under Homoeopathic treatment for a long period. There was scope on his part to examine that Homoeopath as witness in course of hearing to substantiate his claim. He also had the scope to produce all prescriptions for his treatment in order to substantiate the genuinity of his claim. It is really curious to note that inspite of getting ample opportunities the concerned workman has failed to satisfy this Tribunal about the genuinity of his claim. I have failed to understand how such claim of the concerned workman could be believed in absence of authentic evidence:

12. It is the allegation of the concerned workman that he was discharged from his service illegally by the management. Accordingly onus was on him to substantiate his claim but I do not find any hesitation to say that the concerned workman has lamentably failed to substantiate his claim. It cannot be taken into consideration that as the concerned workman belong to the group of Scheduled Caste

he deserved special privilege and for that reason the management shall ignore all his fault as well as the service condition.

13. It transpires clearly from the documents in question which I have discussed above as well as from the evidence on record under which circumstances the concerned workman was discharged from his service. It is seen that the concerned workman suppressing all his faults has made out his case absolutely in different manner fixing all responsibility upon the management to show that it was the management who committed injustice in terminating him from his service.

14. I have carefully considered all the materials on record and I find no hesitation to say that the concerned workman lost his service for his own fault and not for any fault of the management. As management reserved their rights to discharge the service of the concerned workman who got his appointment absolutely on temporary basis for a period of three months I consider that they did not commit any illegality in terminating his service without giving him any opportunity to explain the reason. He got ample scope to explain his reason in course of hearing before this Tribunal but he has also misused the same

15. I hold that the sponsoring union have failed to substantiate the claim on behalf of the concerned workman. Accordingly, he is not entitled to get any relief. In the result, the following Award is rendered :—

“The demand of the Union for reinstatement by the management of Ram Kanali Colliery under Katras Area of M/s. BCCL of Shri Ramesh Rajak is not justified. Consequently, the concerned workman is not entitled to get any relief.”

B. BISWAS, Presiding Officer

नई दिल्ली, 7 मई, 2003

का. आ.1575.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मद्रास रिफाइनरीज लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 653/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-5-2003 को प्राप्त हुआ था।

[सं. एल-30012/144/98-आई.आर. (सी.-I)]

एस० एस० गुप्ता, अवर सचिव

New Delhi, the 7th May, 2003

S.O.1575.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No 653/2001) of the Central Government Industrial Tribunal Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Madras Refineries Ltd. and their workmen.

which was received by the Central Government on 5-5-2003.

[No. L-30012/144/98-IR (C-I)]

S. C. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 29th April 2003

Present : K. KARTHIKEYAN, Presiding Officer

INDUSTRIAL DISPUTE NO. 653/2001

(Tamil Nadu Principal Labour Court CGID No. 181/99)

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the workman Sri C.S. Bhaskar and the Management of Madras Refineries Ltd., Chennai.]

BETWEEN

Sri C.S.Bhaskar : I Party/Workman

AND

The Chairman & Managing Director, II Party/Management
Madras Refineries Ltd. Manali,
Chennai.

Appearance :

For the Workman : M/s. S. Pannerselvam,
Ramesh Chandar,
Advocates

For the Management : M/s. S. Jayaraman, H. Balaji,
V.V. Balasubramaniam,
Advocates

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947), have referred the following industrial dispute for adjudication vide Order No.L-30012/144/98/IR(C-I) dated 11-3-1999 :—

"Whether the management of Madras Refineries Ltd. is justified in dismissing Shri C.S.Bhaskar with effect from 21.11.1997 and if not, to what relief the workman is entitled?"

SETTLEMENT AWARD

This reference has been made earlier to the Tamil Nadu Principal Labour Court, Chennai, where the same was taken on file as CGID No. 181/99. When the matter was

pending enquiry in that Principal Labour Court, the Government of India, Ministry of Labour was pleased to order transfer of this case also from the file of Tamil Nadu Principal Labour Court to this Tribunal for adjudication. On receipt of records from that Tamil Nadu Principal Labour Court, this case has been taken on file as I.D. No.653/2001 and notices were sent to the counsel on record for the I Party/Workman and the II Party/Management informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 15-10-2001 and to prosecute this case further. Accordingly, the learned counsel on either side along with their respective parties have appeared and prosecuted this case further. The Claim Statement of the I Party/Workman was filed earlier before the Tamil Nadu Principal Labour Court, Chennai, when the matter was pending there for adjudication and the Counter Statement of the II Party/Management was filed before this Tribunal after the transfer of this case to this Tribunal for adjudication.

2. The I Party/Workman Sri C.S.Bhaskar has raised this industrial dispute against the II Party/Management M/s. Madras Refineries Ltd., Chennai, challenging the action of the management in dismissing him from service with effect from 21-11-1997 as unjustified and has requested this Tribunal to pass an Award directing the II Party/Management to reinstate him in service with back wages and other resultant benefits.

3. When the matter was taken up for enquiry finally, a Memorandum of Settlement under section 18(1) of the Industrial Disputes Act, 1947 has been filed by both the parties on 24-4-2003 and the same has been recorded. At the request of the II Party/Management, the case was adjourned to 29-4-2003, this day for making payment of the agreed amount as compensation to the I Party/Workman Sri C.S.Bhaskar.

4. Today both the parties and the counsel on record on either side present and informed the Tribunal that the matter has been settled between the parties and a Cheque for a sum of Rs.6,50,000 (Rupees Six Lakhs Fifty Thousand only) is being given by the II Party/Management to the I Party/Workman Sri C.S.Bhaskar in full quite of his claim against the II Party/Management. In full and final settlement of the claim of the I Party/Workman Sri C.S.Bhaskar against the II Party/Management of Chennai Petroleum Corporation Ltd., Chennai, the I Party/Workman Sri C.S. Bhaskar received a Cheque dated 25-4-2003 for Rs.6.50.000 (Rupees Six Lakhs Fifty Thousand only) drawn on State Bank of India, Manali, Chennai and has given a stamped receipt for the same acknowledging the receipt of the said cheque. A joint memo to that extent is filed and recorded. Hence, this dispute is closed as settled between the parties. An Award is passed accordingly. The Joint Memo and the enclosure containing the terms of the Settlement shall form part of this Award. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 29th April, 2003.)

K. KARTHIKEYAN, Presiding Officer

Encl : Joint Memo and enclosure containing, Terms of Settlement.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT CHENNAI

I.D. NO. 653 of 2001

C. S. Baskar : Petitioner
P.R. No. 3608

Vs.

Chennai Petroleum Corporation Ltd : Respondent
Chennai-600068, rep. by its
Chairman and Managing Director

Joint Memo filed by the parties

The above mentioned parties arrived at a settlement dated 24-4-2003 under Section 18(1) of the Industrial Disputes Act, copy of which is enclosed.

The parties therefore pray that this Hon'ble Court may be pleased to accept the settlement on its file and pass appropriate orders as prayed for in the settlement.

Dated at Chennai this 24th day of April 2003

Sd/- illegible

Petitioner M. SANKARANARAYANAN,
Deputy Secretary
Chennai Petroleum Corporation
Limited
536, Anna Salai, Teynampet
Chennai-600018
Sd/- illegible

Counsel for Petitioner V. V. BALASUBRAMANIAN,
Counsel for Respondent

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT CHENNAI

I.D. No. 653 of 2001

C.S. Baskar P. R. No. 3608 ...Petitioner

Vs.

Chennai Petroleum Corporation Limited ...Respondent
Chennai-600068, rep. by its
Chairman and Managing Director

SETTLEMENT UNDER SECTION 18(1) OF THE INDUSTRIAL DISPUTE ACT READ WITH RULE I.D. (CENTRAL RULES)

The parties submit as follows :

Whereas the Petitioner Thiru C.S. Baskar was charged by Charge Sheet dated 8-8-1996 for the misconducts

under Clause 38.4 (Theft, fraud, or dishonesty in connection with Company's business or properties), 38.19 (unauthorised removal of Company's property), 38.58 (act which violates the Company's rules and regulations) and 38.65 (act subversive of discipline) of the Certified Standing Orders of the Company; and

Whereas an explanation dated 13-8-96 was submitted by him; and

Whereas a domestic enquiry was held into the charges levelled against him vide Charge Sheet dated 8-8-1996; and

Whereas the Enquiry Officer found him guilty of the charges vide report dated 1-11-1996; and

Whereas the Management, having regard to the gravity and seriousness of the misconduct dismissed him from service by an order dated 21-11-1997; and

Whereas the workman raised an Industrial Dispute I.D. No. 653/2001 which is pending before this Hon'ble Court; and

Whereas during the pendency of this Industrial Dispute, the parties expressed their desire to arrive at a settlement; and

Whereas the parties arrived at the following settlement :

1. Chennai Petroleum Corporation Limited has agreed to pay a sum of Rs. 6,50,000 (Rupees Six Lakhs Fifty Thousand only) in full and final settlement of the claim of the workman.
2. The workman has agreed to accept the above said Rupees Six Lakhs Fifty Thousand only in full and final settlement of all his claims and dues in I.D. No. 653 of 2001.
3. The workman further agrees that he will not press any relief claimed under I.D. No. 653 of 2001 including the relief of reinstatement.
4. The workman agrees that he will execute a stamped receipt for having received the above mentioned Rs. 6,50,000 in full and final settlement of all his claims as stated above.
5. The parties further agree that they will file this settlement before this Hon'ble Court and seek appropriate order in terms of the settlement.

Dated at Chennai, this 24th day of April, 2003.

| | |
|--------------------|----------------------------|
| Sd/- Illegible | Respondent Management |
| Petitioner Workman | M. SANKARANARAYANAN, |
| (C.S. BASKAR) | Deputy Secretary |
| | Chennai Petroleum |
| | Corporation Limited, |
| | 536, Anna Salai, Teynampet |
| | Chennai-600018 |

नई दिल्ली, 7 मई, 2003

का.आ.1576.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मद्रास रिफाइनरीज लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 652/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-5-2003 को प्राप्त हुआ था।

[सं. एल-30012/142/98-आई.आर. (सी-1)]
एस.एस. गुप्ता, अवर सचिव

New Delhi, the 7th May, 2003

S.O.1576.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 652/2001) of the Central Government Industrial Tribunal, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Madras Refineries Ltd. and their workman, which was received by the Central Government on 5-5-2003.

[No. L-30012/142/98-IR(C-I)]
S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 29th April, 2003

PRESENT : K. KARTHIKEYAN, Presiding Officer

INDUSTRIAL DISPUTE NO. 652/2001

(Tamil Nadu Principal Labour Court CGID No. 180/99)

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the workman Sri A. Kumar and the Management of Madras Refineries Ltd., Chennai.]

BETWEEN

Sri A. Kumar : I Party/Workman

AND

The Chairman and Managing Director, Madras Refineries Ltd Manali, Chennai. : II Party/Management

Appearance :

For the Workman : M/s. S. Pannerselvam,
Ramesh Chandar,
Advocates

For the Management

: M/s. S. Jayaraman,
H. Balaji,
V. V. Balasubramaniam,
Advocates

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947), have referred the following industrial dispute for adjudication vide Order No. L-30012/142/98-IR(C-I) dated 11-03-1999 :

“Whether the management of Madras Refineries Ltd. is justified in dismissing Shri A. Kumar with effect from 21-11-1997 and if not, to what relief the workman is entitled?”

SETTLEMENT AWARD

This reference has been made earlier to the Tamil Nadu Principal Labour Court, Chennai, where the same was taken on file as CGID No. 180/99. When the matter was pending enquiry in that Principal Labour Court, the Government of India, Ministry of Labour was pleased to order transfer of this case also from the file of Tamil Nadu Principal Labour Court to this Tribunal for adjudication. On receipt of records from that Tamil Nadu Principal Labour Court, this case has been taken on file as I.D. No. 652/2001 and notices were sent to the counsel on record for the I Party/Workman and the II Party/Management informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 15-10-2001 and to prosecute this case further. Accordingly, the learned counsel on either side along with their respective parties have appeared and prosecuted this case further. The Claim Statement of the I Party/Workman was filed earlier before the Tamil Nadu Principal Labour Court, Chennai, when the matter was pending there for adjudication and the Counter Statement of the II Party/Management was filed before this Tribunal after the transfer of this case to this Tribunal for adjudication.

2. The I Party/Workman Sri A. Kumar has raised this industrial dispute against the II Party/Management M/s. Madras Refineries Ltd., Chennai, challenging the action of the management in dismissing him from service with effect from 21-11-1997 as unjustified and has requested this Tribunal to pass an Award directing the II Party/Management to reinstate him in service with back wages and other resultant benefits.

3. When the matter was taken up for enquiry finally, a Memorandum of Settlement under Section 18(1) of the Industrial Disputes Act, 1947 has been filed by both the parties on 24-04-2003 and the same has been recorded. At the request of the II Party/Management, the case was adjourned to 29-04-2003, this day, for making payment of the agreed amount as compensation to the I Party/Workman Sri A. Kumar.

4. Today both the parties and the counsel on record on either side present and informed the Tribunal that the matter has been settled between the parties and a Cheque for a sum of Rs. 6,50,000/- (Rupees Six Lakhs Fifty Thousand only) is being given by the II Party/Management to the I Party/Workman Sri A. Kumar in full quite of his claim against the II Party/Management. In full and final settlement of the claim of the I Party/Workman Sri A. Kumar against the II Party/Management of Chennai Petroleum Corporation Ltd., Chennai, the I Party/Workman Sri A. Kumar received a Cheque dated 25-04-2003 for Rs. 6,50,000/- (Rupees Six Lakhs Fifty Thousand only) drawn on State Bank of India, Manali, Chennai and has given a stamped receipt for the same acknowledging the receipt of the said cheque. A joint memo to that extent is filed and recorded. Hence, this dispute is closed as settled between the parties. An Award is passed accordingly. The Joint Memo and the enclosure containing the terms of the Settlement shall form part of this Award. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 29th April, 2003.)

Encl: Joint Memo and enclosure
containing Terms of Settlement

K. KARTHIKEYAN, Presiding Officer

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT AT CHENNAI**

I.D. No. 652 of 2001

A. Kumar : Petitioner
P.R. No. 3687

Vs.

Chennai Petroleum Corporation Limited
Chennai -600 068, rep. by its
Chairman and Managing Director : Respondent

**SETTLEMENT UNDER SECTION 18(1) OF THE
INDUSTRIAL DISPUTE ACT READ WITH RULE
I.D. (CENTRAL RULES)**

The parties submit as follows :

Whereas the Petitioner Thiru A. Kumar was charged sheeted by Charge Sheet dated 8-8-1996 for the misconducts under Clause-38.4 (Theft, fraud, or dishonesty in connection with Company's business or properties), 38.19 (unauthorised removal of Company's property), 38.58 (act which violates the Company's rules and regulations) and 38.65 (act subversive of discipline) of the Certified Standing Orders of the Company; and

Whereas an explanation dated 13-8-1996 was submitted by him; and

Whereas a domestic enquiry was held into the charges levelled against him vide Charge Sheet dated 8-8-1996; and

Whereas the Enquiry Officer found him guilty of the charges vide report dated 1-11-1996; and

Whereas the Management, having regard to the gravity and seriousness of the misconduct dismissed him from service by an order dated 21-11-1997; and

Whereas the workman raised an Industrial Disputes I.D. No. 652/2001 which is pending before this Hon'ble Court; and

Whereas during the pendency of this Industrial Dispute, the parties expressed their desire to arrive at a settlement; and

Whereas the parties arrived at the following settlement :

1. Chennai Petroleum Corporation Limited has agreed to pay a sum of Rs. 6,50,000/- (Rupees Six Lakhs Fifty Thousand only) in full and final settlement of the claim of the workman.
2. The workman has agreed to accept the above said Rupees Six Lakhs Fifty Thousand only in full and final settlement of all his claims and dues in I.D. No. 652 of 2001.
3. The workman further agrees that he will not press any relief claimed under ID No. 652 of 2001 including the relief of reinstatement.
4. The workman agrees that he will execute a stamped receipt for having received the above mentioned Rs. 6,50,000/- in full and final settlement of all his claims as stated above.
5. The parties further agree that they will file this settlement before this Hon'ble Court and seek appropriate order in terms of the settlement.

Dated at Chennai, this 24th day of April, 2003.

| | |
|----------------------------------|--|
| Petitioner/Workman (A. KUMAR) | M. SANKARANARAYANAN, Deputy Secretary Chennai Petroleum Corporation Limited 536, Anna Salai, Teynampet Chennai-600018 |
|----------------------------------|--|

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT AT CHENNAI**

I.D. NO. 652 of 2001

A. Kumar : Petitioner
P.R. No. 3687

Vs.

Chennai Petroleum Corporation Ltd.

Chennai 600068 rep. by its

Chairman and Managing Director : Respondent

Joint Memo filed by the Parties

The above mentioned parties arrived at a settlement dated 24-4-2003 under Section 18(1) of the Industrial Disputes Act, copy of which is enclosed.

The parties therefore pray that this Hon'ble Court may be pleased to accept the settlement on its file and pass appropriate orders as prayed for in the settlement.

Dated at Chennai this 24th day of April, 2003

Petitioner M. SANKARANARAYANAN,
Deputy Secretary
Chennai Petroleum Corporation
Limited,
536, Anna Salai, Teynampet,
Chennai-600018

Counsel for Petitioner : Counsel for Respondent

नई दिल्ली, 7 मई, 2003

का. आ. 1577.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण I, धनबाद के पंचाट (संदर्भ संख्या 254/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-5-2003 को प्राप्त हुआ था।

[सं. एल-20012/455/2001-आई.आर (सी-1)]
एस.एस. गुप्ता, अवर सचिव

New Delhi, the 7th May, 2003

S.O. 1577.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 254/2001) of the Central Government Industrial Tribunal I, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 5-5-2003.

[No. L-20012/455/2001-IR (C-I)]
S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference U/s. 10(1)(d)(2A) of the
Industrial Disputes Act, 1947

Reference No. 254 of 2001

Parties : Employers in relation to the management of
Sijua Area of M/s. B.C.C. Ltd.

AND

Their workmen

Present : Shri S. H. Kazmi, Presiding Officer.

Appearances :

For the employers : Shri H. Nath, Advocate

For the Workman : None

State : Jharkhand. : Industry : Coal.

Dated, the 21st April, 2003

AWARD

By Order No. L-20012/455/2001-I.R. (C-I) dated the 29th November, 2001 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

अनुसूची

“क्या राष्ट्रीय को.म. संघ की भा. को. लि. सिजुआ क्षेत्र के प्रबंधतंत्र से मांग कि श्री अशोक कुमार एवं एस. जी. हुसैन को वर्ष 1993 के कैट-4 में पदोन्नत किया जाए उचित एवं तर्कसंगत है यदि हाँ, तो संबंधित कर्मकार किस राहत के पात्र हैं”

2. Sri H. Nath, Advocate, appearing on behalf of the management is present, but like earlier today (21-4-2003) also none appears on behalf of the workman and the rejoinder and documents for filing of which time was granted repeatedly have also not been filed as yet.

It appears from the record that since 15-5-2002 itself none is appearing on behalf of the workman and the steps as required were also not taken despite several adjournment being granted from time to time for the same. It further appears that on the last date after noticing the past developments it was clearly observed while granting adjournment once again that if on the next date also the position would remain the same then some necessary and appropriate order regarding final disposal of this reference would be passed. As it is evident, no significant development has taken place and the position remains the same. As the union or the concerned workman quite obviously does not seem to have any interest in pursuing the present dispute, it is needless to keep this reference pending any further.

This reference, as such, stands finally disposed of.

S. H. KAZMI, Presiding Officer

नई दिल्ली, 7 मई, 2003

का. आ. 1578.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा० को० को० लि०, के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण II, धनबाद के पंचाट (संदर्भ संख्या 35/90) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-5-2003 को प्राप्त हुआ था।

[सं. एल-20012/79/90-आई.आर.(सी-I)]

एस० एस० गुप्ता, अवर सचिव

New Delhi, the 7th May, 2003

S.O. 1578.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 35/90) of the Central Government Industrial Tribunal, II Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 5-5-2003.

[No. L-20012/79/90-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO.-II, AT DHANBAD

PRESENT

Shri B. Biswas;

Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act, 1947

REFERENCE NO. 35 OF 1990

Parties: Employers in relation to the management of 20/21 Pits Murulidih Colliery of M/s. B.C.C.L and their workman.

APPEARANCES:

On behalf of the workman : Shri K. Chakravorty,
Advocate.

On behalf of the employers : Shri H. Nath.
Advocate.

State: Jharkhand. Industry : Coal.
Dhanbad, the 23rd April, 2003

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10 (1) (d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/79/90-I. R. (Coal-I), dated the 16th November, 1990.

SCHEDULE

“Whether the management of 20/21 Pits Murulidih Colliery in Mohuda Area No. II of M/s. BCCL is justified in denying regularisation of the workmen

138/9/03-9

Shri Maqbul Ansari and Shri Banshi Das in the post of time rate Trammers. If not, to what relief the workmen are entitled?”

2. It transpires from the record that inspite of giving long chances the sponsoring union have failed to submit any written statement and documents to substantiate the claim in question over which they raised an industrial dispute.

3. On the contrary from the statement submitted by the management it transpires that the sponsoring union raised an industrial disputes before the ALC(C) Dhanbad alleging illegal and arbitrary denial or regularisation of the concerned workmen and change of their service conditions who alleged to be posted at 20/21 Pits Murulidih Colliery. They submitted that on receipt of the said notice from the ALC(C), Dhanbad they appeared and submitted that as there was no merit in relation to the claim of the concerned workmen the same was liable to be dismissed. They submitted that as the conciliation proceeding was ended in failure of the instant reference was made. They submitted that as M/s. BCCL is a Govt. of India undertaking and not a private concern they are to follow the procedure prescribed for every appointment, and for which there is no scope to regularise the service of any workman whimsically violating the procedure in question. Accordingly, they submitted that the claim of the concerned workmen is unjustified and cannot be accepted in any manner. The schedule for reference is :—

“Whether the management of 20/21 Pits Murulidih Colliery under Mohuda Area No. 2 of M/s. BCCL is justified in denying regularisation of the workmen Sri Maqbul Ansari and Shri Banshi Das in the post of Time rated Trammers ? If not, to what relief the workmen are entitled?”

4. Considering the schedule of the reference in question it can be presumed that the concerned workmen were Trammers under the management. They raised the Industrial dispute with a prayer for regularisation of their services as Time rated Trammer. Management categorically have denied the claim of the workmen. Before coming to the conclusion if the concerned workmen are entitled to be regularised as Time rated Trammers, initial onus rests on them to substantiate their claim.

5. It is astonishing to note that inspite of getting several opportunities the sponsoring Union did not care to submit any written statement and document. They have not only grossly violated the provision as laid down in Rule 10 (B) of the Industrial Dispute Act but also killed time for years together taking the plea for submission of written statement. In the circumstances management though submitted written statement denying the claim of the workmen as per schedule of reference declined to adduce any evidence. As no material in support of the claim of the concerned workmen is forthcoming before this Tribunal there is sufficient reason to consider under which

circumstances the management declined to adduce any evidence. Initial burden to substantiate the claim in question was on the concerned workmen but they have lamentably failed to do so. From the written statement submitted by the management it transpires clearly that they being a public undertaking concern have to maintain some procedure and also recruitment rules for regularising the service of any workman. They submitted that in the instant case there was no scope to regularise the concerned workmen as Time rated trammers as there was no existence of such posts at 20/21 Pits Murulidih Colliery under Mohuda Area No. II. The claim of the management has left unrebutted though this aspect ought to have been considered with all importance. Accordingly, at this stage there is no scope in absence of any cogent material to uphold the more claim of the concerned workmen.

In the result the following award is rendered:—

“The management of 20/21 Pits Murulidih Colliery in Mohuda Area No. II of M/s. BCCL is justified in denying regularisation of the workmen Shri Maqbul Ansari and Sri Banshi Das in the post of time-rate Trammers. Consequently, the concerned workmen are not entitled to get any relief.”

B. BISWAS, Presiding Officer

नई दिल्ली, 7 मई, 2003

का. आ. 1579.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा० को० को० लि०, के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 23/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-5-2003 को प्राप्त हुआ था।

[सं. एल-20012/501/95-आई.आर.(सी-1)]
एस०एस०गुप्ता, अवर सचिव

New Delhi, the 7th May, 2003

S.O. 1579.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 23/97) of the Central Government Industrial Tribunal, II Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 5-5-2003.

[No. L-20012/501/95-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. -II, AT DHANBAD

PRESIDENT

Shri B. Biswas,
Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act, 1947

REFERENCE NO. 23 OF 1997

Parties: Employers in relation to the management of Bhowra Area of M/s. B.C.C.L and their workman.

APPEARANCES:

On behalf of the workman : Shri S.N. Goswami.
Advocate.

On behalf of the employers : Shri D.K. Verma.
Advocate.

State: Jharkhand. Industry : Coal.

Dhanbad, the 16th April, 2003

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10 (1) (d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/501/95-IR. (Coal-I), dated the 11th February, 1997.

SCHEDULE

“Whether the action of the management of Bhowra Area of M/s. BCCL in not allowing Sri Anand Kumar Gupta Jr. Inspector (Quality Control) to resume his duties w.e.f. 13-2-1995 is justified? If not, to what relief is the workman entitled?”

2. The case of the concerned workman according to the W.S. submitted by the sponsoring union on his behalf in brief is as follows:—

The sponsoring union submitted that the concerned workman was a permanent Technical Inspector (Quality Control) of Bhora Area No. XI under the management. They submitted that the concerned workman fell seriously ill owing to B.H.P. and was admitted at Central Hospital Dhanbad on 7-7-94 for his treatment duly referred by the Medical Superintendent of Bhowra Central Hospital. The Central Hospital, Dhanbad thereafter referred the concerned workman to A.I.I.M.S., New Delhi for his admission and better treatment for his suffering from B.H.P. Accordingly the concerned workman was admitted at A.I.I.M.S., New Delhi for his treatment and remained under treatment there till 26-12-94 and thereafter referred back to Central Hospital, Dhanbad with advice for further treatment where he went on treatment. In view of that advice the concerned workman was released from A.I.I.M.S and remained under treatment again at Central Hospital, Dhanbad till 13-2-95. They submitted that the Medical Officer of Central Hospital, Dhanbad on 13-2-95 declared him fit and advised him to join his duty.

3. They submitted that in view of fit certificate issued by the medical officer, Central Hospital, Dhanbad, when the concerned workman on 14-2-95 reported for his duty

he was not allowed to resume his duty till 6-9-95 arbitrarily, illegally and violating the principle of natural justice. They submitted that claim of the concerned workman for his full back wages and other consequential benefits for the period from 14-2-95 till 5-9-95 is bonafied and he is legally entitled to get the same. They alleged that as the management refused to pay his back wages for the period in question they raised an industrial dispute which ultimately resulted reference to this case for award.

4. Management on the contrary after Filing W.S. cum rejoinder have denied all the claims and allegations which the sponsoring union asserted in the W.S submitted by them on behalf of the concerned workman.

They submitted that the concerned workman was posted in the Sales Department of Bhowra Area for a long period. They disclosed that for his alleged controversial activities administrative action was started for his transfer from the said area to some other areas and finally he was transferred on administrative ground to Govindpur area vide office order dt. 2-8-94 and subsequently he was released vide office order dated 10-8-94. They submitted that inspite of the said order of transfer and also inspite of his release the concerned workman did not report to his duty at Govindpur area intentionally and to avoid his order of transfer he got himself admitted at Central Hospital, Dhanbad and subsequently at A.I.I.M.S., New Delhi for treatment. They however, admitted that the concerned workman declared medically fit for resuming his duties on 13-2-95. They disclosed that in the meantime, the competent authority considered his case on health ground and transfer order already issued was amended and he was again posted back at Bhowra Area office vide order dt. 4/5-11-94. They alleged that the concerned workman did not report for his duty at Bhowra office inspite of his declaring medically fit by the Medical Officer of Central Hospital Dhanbad on 13-2-95. They submitted that several letters were issued to the concerned workman at his address directing him the report for his duties but all those letters were returned back being undelivered. Lastly when a final letter dt. 7-9-95 was given to him intimating the management's proposal to initiate disciplinary action against him he reported for his duties at Bhowra Area office on 10-9-95. They disclosed that in view of the facts the concerned workman was not paid his wages w.e.f. 13-2-95 till he resumed his duties and for doing so neither they committed any illegal act nor took any arbitrary decision violating the principle of natural justice. Accordingly they submitted prayer to pass award rejecting the claim of the concerned workman which has been place through sponsoring Union.

5. The points to be decided in this reference are:—

"Whether the action of the management of Bhowra Area of M/s. BCCL in not allowing Sri Anand Kumar Gupta, Jr. Inspector (Quality Control) to resume his duties w.e.f 13-2-1995 is justified? If not, to what relief is the workman entitled?"

FINDING WITH REASONS

6. Considering the facts disclosed in the pleadings of both sides I find no dispute to hold that the concerned workman was a permanent Technical Inspector (Quality Control) at Bhowra Area No. XI under the management. From the evidence of the concerned workman it transpires that owing to his Prostrate Problem on 6-6-94 he was admitted at Central Hospital Dhanbad for his treatment. Thereafter, Central Hospital, Dhanbad referred him to A.I.I.M.S. New Delhi for his further treatment and accordingly after getting release from the said hospital he was admitted at A.I.I.M.S. New Delhi for his further treatment and in connection with his treatment he was admitted there as indoor patient and again on recommendation of A.I.I.M.S. he returned back to Dhanbad and remained under treatment at Central Hospital till 12-2-95. WW-1 i.e. the concerned workman in course of his evidence submitted all relevant medical papers in support of his claim Ext. W-1 series. I have carefully considered all those medical papers and did not find any irregularity relating to authenticity of the claim of the concerned workman. From the evidence of WW-1 and also considering medical papers it transpires that the concerned workman for the treatment of his Prostrate gland remained under treatment from 6-6-94 to 12-2-95. From the medical paper marked as Ext. W-1/3 issued by the Central Hospital, Dhanbad it transpires that the concerned workman was declared medically fit to resume his duties on 13-2-95. It is the claim of the concerned workman that on 13-2-95 when he went to his office at Bhowra area with a view to resume his duties by filling joining report he was disallowed by the management to resume his duties. He disclosed that ultimately on 7-9-95 he was allowed to join his duty. He submitted that for the period from 13-2-95 to 6-9-95 he remained idle as he was not allowed by the management to join to his duties inspite of furnishing fit certificate issued by the Medical Officer, Central Hospital, Dhanbad illegally and arbitrarily.

7. On the contrary the claim of the management appears to be quite different from the claim of the concerned workman. They submitted that on administrative ground the concerned workman was transferred to Govindpur Area from Bhowra Area vide office order dt. 2-8-94 and accordingly he was released on 10-8-94. They alleged that inspite of getting release the concerned workman did not join to his duty at his new place of work. On the contrary intentionally to avoid his order of transfer he got himself admitted at Central Hospital Dhanbad and then at A. I. I. M. S. taking the plea of his treatment.

8. Management however, admitted that subsequently on health ground the said transfer order was amended and he was again posted back at Bhowra area vide office order dt. 4/5-11-94. It is the allegation of the management that inspite of his declaring medically fit by the Medical Officer, Central Hospital Dhanbad on 13-2-95

the concerned workman did not resume to his duties. As a result they issued letters to the concerned workman to join his duties but as it did not yield any result a letter of ultimatum to take disciplinary action was issued to the concerned workman, dt. 7-9-95 and on receipt of the said letter he joined his duties on 10-9-98. Disclosing all these facts management submitted that as the concerned workman did not resume his duties after he was declared medically fit with effect from 13-2-95 he is not legally entitled to get any back wages, till he resumed to his duty.

9. Considering the submissions of both sides it transpires that both the concerned workman and the management have brought allegation and counter allegation in the matter of resumption of duties against each officer. It is undisputed that the concerned workman was declared medically fit with effect from 13-2-95. It is the claim of the concerned workman that on 13-2-95 when he came to his office at Bhowra Area with a view to resume his duty he was not allowed by the management to do so and ultimately he was allowed to resume his duty on 6-9-95. On the contrary it is the claim of the management that after the concerned workman was declared medically fit on 13-2-95 by the Medical Officer, Central Hospital, Dhanbad he did not come to his office for resumption of his duty. Accordingly intimation was given to him vide letter dt. 19-7-95 and 7-8-95 (Ext. M-2) with a direction to resume his duty but he did not respond to those letters. Ultimately on 18-8-95 when they issued ultimatum to take disciplinary action against him (Ext M-2) the concerned workman came and resumed his duties.

10. Considering medical papers there is no dispute to hold that the concerned workman was admitted at Central Hospital, Dhanbad for his treatment of Prostrate Gland on 7-7-94 being referred by the Medical Superintendent of Bhowra Hospital. There is also no dispute to hold that the concerned workman thereafter, was referred to A.I.I.M.S. at New Delhi for his further treatment and he remained there under treatment till 26-12-94 and thereafter he was again referred back to Central Hospital, Dhanbad for his further treatment. It is seen that before the order of transfer issued by the management on 2-8-94 the concerned workman was admitted in the hospital for his treatments. No material is forthcoming to show that apprehending his order of transfer he was admitted in the hospital taking the plea of his treatment. It is seen that long before issuance of order of transfer when the concerned workman was admitted in the hospital how the management in their W.S. submitted that intentionally the concerned workman was admitted in the hospital to avoid his order of transfer. There is reason to believe that the management unnecessarily made aspersion against the concerned workman. There is no reason to consider that the concerned workman will be forwarded to A.I.I.M.S. by the Medical Officer, Central Hospital for his further treatment if he was not actually ill. There was also no obligation of the management to amend that order of transfer of the concerned workman suo moto

on the ground of his ailment particularly when no evidence is forthcoming to show that the said order of transfer was amended on representation made by the workman. It is seen that for some reasons or other the management hold adverse view against the concerned workman.

11. The concerned workman was declared medically fit on 13-2-95. It is the specific contention of the workman that after obtaining his fit certificate he came to his office and submitted joining report with a view to resume his duty but he was not allowed by the management till 6-9-95. Management relying on the letter marked as Ext. M-2 submitted that as the concerned workman did not resume his duty after he was medically fit they asked him to resume his duty. The concerned workman was declared medically fit on 13-2-95. No explanation is forthcoming on the part of the management to show why they made long delay to issue such letter particularly when the standing order speaks clearly that if a person remain absent for more than ten days without prior permission from the employers in that case the employer is eligible to take disciplinary action against that workman. The concerned workman was declared medically fit from 13-2-95 so his absence from duty should be considered as unauthorised absence after that date and the management was very much competent to take disciplinary action against him but without taking that recourse they issued letter to the concerned about six months after he was declared medically fit. In course of hearing management have failed to give any satisfactory explanation to this effect.

12. Apart from this fact management did not highlight in course of hearing how they came to know that the concerned workman was declared medically fit on 13-2-95. It is not expected that a workman unnecessarily will remain absent inspite of his declaring medically fit by the M.O. Considering the facts and circumstances there is reason to believe that on 13-2-95 concerned workman went to his office with a view to resume his duty but he was not allowed to do so. Silence on the part of the management to take action against the concerned workman for about six months definitely will strengthen this doubt. No evidence also is forthcoming that the concerned workman received the letters dt. 19-7-95, 4-8-95 and 18-8-95. Until and unless this fact is established there is no scope to say that the workman tried to suppress the letters in question and ultimately being afraid of taking disciplinary action against him he joined to his post. The letter dt. 18-8-95 (Ext. M-2) shows clearly that disciplinary action will be taken against the concerned workman if he fails to join his duty within 72 hours after receipt of the letter. The concerned workman resumed his duty on 6-9-95 i.e. after a fortnight of issuance of this letter. No evidence is forthcoming to show on the part of the management when that letter was received by the workman. It is seen that the management also did not initiate departmental proceeding even after expiry of the time limit mentioned in that letter. As such on careful consideration of all the facts and circumstances I find no sufficient ground

to disbelieve the workman in respect of his claim. The facts and circumstances shows clearly that the management arbitrarily did not allow the concerned workman to resume his duty when he came to his office with medical fit certificate. I hold that as a result the concerned workman was deprived of earning his wages for the period in question due to arbitrary decision of the management and for which they are liable to pay full back wages and consequential relief for the period from 13-2-95 to 5-9-95.

In the result, the following award is rendered :—

“The action of the management of Bhowra Area of M/s. B.C.C.L. in not allowing Sri Anand Kumar Gupta Jr. Inspector (Quality Control) to resume his duties w.e.f. 13-2-1995 is not justified. Consequently, the concerned workman is entitled to get pay full back wages and consequential relief for the period from 13-2-95 to 5-9-95.”

The management is directed to implement the Award within three months from the date of its publication in the Gazette of India in the light of my observation made above.

B. BISWAS, Presiding Officer

नई दिल्ली, 7 मई, 2003

का. आ. 1580.——औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा० को० को० लि०, के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II, धनबाद के पंचाट (संदर्भ संख्या 180/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-5-2003 को प्राप्त हुआ था।

[सं. एल-20012/297/92-आईआर(सी-I)]
एस०एस० गुप्ता, अवर सचिव

New Delhi, the 7th May, 2003

S.O. 1580.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. I80/93) of the Central Government Industrial Tribunal-II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 5-5-2003.

[No. L-20012/297/92-IR (C-I)]
S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

SHRI B. BISWAS,

PRESIDING OFFICER

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act, 1947.

REFERENCE NO. 180 OF 1993

Parties : Employers in relation to the management of Kustore Colliery of M/s. B.C.C.L. and their workman.

APPEARANCES:

| | | |
|----------------------------|---|------------|
| On behalf of the workman | : | None |
| On behalf of the employers | : | None |
| State | : | Jharkhand. |

Industry : Coal.

Dated, Dhanbad, the 16th April, 2003

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10 (1) (d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/(297)/92-I.R. (Coal-I), dated the 5/9-11-93.

SCHEDULE

“Whether the action of the management of Kustore Colliery of M/s. B.C.C.L., Dist. Dhanbad in denying employment to the dependent son-in-law of late Sushilay Lal under clause 9.4.2 of N.C.W.A.-III is justified? If not, to what relief the workman is entitled?”

2. The case of the concerned workman according to W.S. submitted by the sponsoring union in brief is as follows :—

It has been submitted by the sponsoring union that Sushilay Lal was an employee under the management at Kustore are who died on 4-1-84 leaving behind two sons, one married daughter and widow. Of the two sons one was minor and his other son was adult and employed. They submitted that the daughter who was married lived in the establishment of her father with her husband being his dependent. Accordingly, as per clause 9.4.2 of N.C.W.A.-III the said son-in-law Gauri Shankar Srivastava submitted petition to the management for his employment under the said provision of N.C.W.A.-III. But the management regretted to provide employment to him taking the ground that one son of the deceased is already in employment. Accordingly, said Gauri Shankar Srivastava raised an Industrial dispute before the ALC(C), Dhanbad which ultimately resulted reference to this Tribunal for award.

3. Management on the contrary after filing W.S.-cum-rejoinder have denied all the claims and allegations which the sponsoring union asserted in their W.S. Admitting the fact relating to death of Sushilay Lal on 4-1-84 management submitted that the claim for employment which Gauri Shankar Srivastava has made under clause 9-4-2 of N.C.W.A.-III being his dependent son-in-law is false as he never lived with his wife in the establishment of his father-in-law being his dependent. They submitted that

there is a provision for providing employment to one of the dependent/legal heirs on compassionate ground under clause 9.4.2 of N.C.W.A.-III in case of death of an employee during the period of his service but the said provision of NCWA-III is not applicable in the instant case as the claimant was neither dependent nor lived with his father-in-law in the same establishment. Accordingly, management submitted prayer to pass award rejecting the claim of the so-called workman.

4. Points to be decided in this reference are :—

"Whether the action of the management of Kustore Colliery of M/s. B.C.C.L., Dist. Dhanbad in denying employment to the dependent son-in-law of late Sushilay Lal, under clause 9.4.2 of N.C.W.A.-III is justified? If not, to what relief the workman is entitled?"

FINDING WITH REASONS

5. It transpires from the record that neither the concerned workman nor the management adduced any evidence to substantiate their respective claims. Under these circumstances let us consider relying on the facts disclosed in the pleadings of both sides how far the claim of the concerned workman stands for his employment as per clause 9.4.2 of N.C.W.A.-III.

6. From the pleadings of both sides it is clear that Sushilay Lal was an employee under the management at Kustore area. It is admitted fact that said Sushilay Lal died on 4-1-84 while he was very much in service. It is the claim of the sponsoring union that said Sushilay Lal died leaving behind his widow, two sons and one married daughter. They disclosed that of the said two sons, one son was minor and the other was adult and employed. They further disclosed that the petitioner Gauri Shankar Srivastava was son-in-law of the deceased and he lived in the same establishment of the said father-in-law along with his wife being his dependent. Disclosing this fact the sponsoring union submitted that as the petitioner Gauri Shankar Srivastava was dependent to his father-in-law i.e. the deceased and also as he lived in the same establishment he is entitled to get employment on compassionate ground as per clause 9.4.2 of N.C.W.A.-III. Considering the fact that there was no scope for providing employment to the minor son or widow of the deceased. It is the contention of the sponsoring union that in view of such situation when said Gauri Shankar Srivastava submitted application for his employment under that clause the management regretted to consider his prayer illegally, arbitrarily and violating the principle of natural justice.

7. On the contrary the management categorically submitted that the petitioner Gauri Shankar Srivastava was neither dependent to his father-in-law nor even lived in his establishment along with his wife. Accordingly, there was no scope for providing employment to him under the said clause. The management further submitted that one of the son of the deceased is in employment very much and for

which there is no scope to say that due to death of Sushilay Lal his family was put in real hardship.

8. There is no dispute to hold that clause 9.4.2 of N.C.W.A.-III has made provision for employment of one dependent of the worker who dies while in service. The said provision was included in N.C.W.A. for the interest of safeguarding the bereaved family so that the said family do not put into real hardship or poverty due to sudden death of the sole earning member of the family. It is seen that Sushilay Lal died leaving behind his widow, two sons and one married daughter. Out of these two sons, one son was minor but the other son was adult and very much in employment and they used to live together in the same family of the deceased. Accordingly, there is no scope to say that due to sudden death of Sushilay Lal his family was put in real economic hardship.

9. As per definition of clause 9.4.2 the daughter and son-in-law are to be considered as eligible claimant for employment if it is established that they are absolutely dependent on the income of the deceased and if there was no claim on the part of the direct descendant for employment. It is the claim of the petitioner that of the two sons of the deceased one was minor and the other was adult and he was in employment and for which there was no scope to provide any employment to any of them by the management on compassionate ground. No evidence is forthcoming if the widow relinquished her claim for employment after the death of her husband. Apart from this fact the most important aspect which is to be looked into is whether the petitioner was actually dependent to his father-in-law. No explanation is forthcoming why after marriage the petitioner started living in the establishment of his father-in-law along with his wife. Apart from this fact onus absolutely lie on the petitioner to establish beyond all reasonable doubt that he was not only a member in the family of the deceased but he was wholly dependent on his income. The petitioner had got ample scope to substantiate this claim but inspite of getting opportunity he has failed to produce a single scrap of paper. Until and unless this fact is established absolutely there is no scope to uphold his contention. Facts disclosed in the W.S. cannot be considered as cogent evidence until and unless it is well established by authentic document. I find no hesitation to say that the sponsoring union has lamentably failed to establish this fact and for which I do not find any reason to consider such prayer for employment of the petitioner. The management I consider had in the circumstances cogent ground to regret his prayer. In the result, the following Award is rendered :—

"The action of the management of Kustore Colliery of M/s. BCCL, Dist. Dhanbad in denying employment to the dependent son-in-law of late Sushilay Lal, under clause 9.4.2 of N.C.W.A.-III is justified. Consequently, the concerned workman is not entitled to get any relief."

B. BISWAS, Presiding Officer

नई दिल्ली, 9 मई, 2003

का. आ. 1581.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. सी. बी. (पी डब्ल्यू) के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चण्डीगढ़ के पंचाट (संदर्भ संख्या 62/94) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-5-2003 को प्राप्त हुआ था।

[सं. एल-42012/171/93-आई.आर. (डी.यू.)]

कुलदीप राय चर्मा, डैस्क अधिकारी

New Delhi, the 9th May, 2003

S.O. 1581.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 62/94) of the Central Government Industrial Tribunal/Labour Court, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of B.C.B. (PW) and their workman, which was received by the Central Government on 9-5-2003.

[No. L-42012/171/93-IR (DU)]

KULDIP RAI VERMA, Desk Officer
ANNEXURE

BEFORE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

SHRI S. M. GOEL

PRESIDING OFFICER

Case No. ID 62/94

Sh. Durga Dass C/o S-2/773, Sunder Nagar,
Distt. Mandi (H.P.)

..... Applicant

V/s

1. Chief Engineer, Beas Project (PW)
Electrical, Chandigarh.
2. The Executive Engineer, B.C.B. (PW)
Prem Nagar, Bhiwani (Haryana)

..... Respondents

REPRESENTATIVES

| | | |
|--------------------|---|--|
| For the workman | : | Shri Dhani Ram |
| For the management | : | Sh. K.C. Goel with Ms. Neeru Chadha |

AWARD

(Passed on 9-4-2003)

The Central Govt. Ministry of Labour vide Notification No.L-42012/171/93-IR (DU) dated 1st August, 1994 has referred the following dispute to this Tribunal for adjudication :

“Whether the action of Executive Engineer B.C.B.(PW) Bhiwani in terminating the services of Shri Durga Dass S/o Shri Khinder w.e.f. 15-6-93 is

legally just and valid? If not, then to what relief Shri Durga Dass is entitled to and from which date?”

2. In the claim statement it is pleaded by the workman that he was appointed as T. mate in the year 1980 and his services were terminated by the management w.e.f. 27-2-1993 although he had produced his medical certificate. The SDO concerned had forwarded his application to the X.E.N. But he was not taken on duty. No enquiry was conducted by the management. Thus, the workman has prayed that he be reinstated in service with full backwages and other attendant benefits.

3. In the written statement the management has pleaded that workman absented himself without any permission w.e.f. 1-1-1993 and he was served with regd. notice and was directed to report for duty immediately not later than 10 days. The Applicant did not turn up for duty and as per clause 18(b) XXXII of the Certified Standing Orders his services were terminated. It is further pleaded that the applicant was not entitled to any leave without permission of the competent authority and the service of the applicant was rightly terminated under the Certified Standing Orders. It is thus prayed that there is no merit in the reference and the same be rejected.

4. Replication to the written statement was also filed reiterating the claim made in the claim statement.

5. In the evidence the applicant filed his own affidavit Ex. W-1 and also documents Ex. W-2 to W-4. He was also cross-examined by the management. In cross examination the applicant admitted that he had received the final payment of Rs. 21458/- He has also admitted his signatures on Ex. M-2 in which he demanded his balance from the year 1980 to 1992 and he has also stated in the application that he would not press his case in the Labour Court. In rebuttal the management produced MW1 R. C. Gupta and MW 2 Shri L. D. Mehta.

6. I have heard the learned representatives of the parties and have gone through the record and evidence of the case. The facts of the case are admitted. It is admitted by the workman that he remained absent without getting the leave sanctioned from the competent authority and a registered notice was sent which was received back unclaimed. It is also admitted that workman for the first time submitted the medical certificate to the SDO on 27-2-1993 although he was absenting himself from duty w.e.f. 1-1-1993. The learned rep. of the management has argued that the services of the workman were terminated under clause 18 (b) XXXII of the Certified Standing Orders applicable on the management in which the absence of 10 days is sufficient to invoke the Standing Orders. The management also proved on record the regd. notice which was received back unclaimed. The address on the Regd. Notice is correct and the workman had absented himself for more than 10 days unauthorisedly without any permission. Thus to my mind, there is no illegality in the termination of the services of the workman. Moreover from Ex. M1 it is

proved that the workman only wanted his dues and he did not want to pursue with the reference as per his application dated 12-3-1997 in which he wanted to withdraw his case. He also admitted of having received his dues amounting to Rs. 21458/- Thus in the circumstances of the present case, I am of the opinion that there is no need for holding any enquiry and the services have rightly been terminated under the Certified Standing Orders and there is no merit in the present reference and the same is answered against the workman. The appropriate authority be informed accordingly.

Chandigarh

S. M. GOEL, Presiding Officer

9-4-2003

नई दिल्ली, 9 मई, 2003

का. आ. 1582.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार करेंसी नोट प्रेस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम मंत्रालय, मुम्बई नं० 1 के पंचाट (संदर्भ संख्या सी० जी० आई० टी० 1/20 आफ 87) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-5-2003 को प्राप्त हुआ था।

[सं. एल-42012/12/86 डी०-II (बी)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 9th May, 2003

S.O. 1582.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-1/20 of 87 Ext.) of the Central Government Industrial Tribunal/ Labour Court, Mumbai No. I, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Currency Note Press and their workman, which was received by the Central Government on 9-05-2003.

[No. L-42012/12/86-D-II (B)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, BOMBAY

PRESIDING OFFICER—JUSTICE S. N. KHATRI

REFERENCE NO. CGIT-20 OF 1987

PARTIES : Employer in relation to the Management of Currency Note Press, Nasik and their Workmen

APPEARANCES :

| | | |
|--------------------|---|------------------------------|
| For the management | : | Shri B.M. Masurkar, Advocate |
| For the workman | : | Shri S. M. Dharap, Advocate |
| Industry | : | Currency Notes |
| State | : | Maharashtra |

Bombay, the 18th September, 1991

AWARD (PART I)

The Central Government has referred the following industrial dispute to this Tribunal for adjudication under Section 10 of the Industrial Disputes Act, 1947.

“Whether the action of the management of Currency Note Press, Nasik Road, Nasik, in dismissing the services of Shri A. D. Nagre, Ex-Examiner w.e.f. 27-12-1980 is justified? If so, to what relief and from what date, the concerned workman is entitled to?”

This disposes of the preliminary issue whether the domestic inquiry held by the Management against the Workman is valid and proper.

2. The facts that are material for the disposal of the preliminary issue are these: A. D. Nagre (hereafter ‘the Workman’) was in the employ of the Currency Note Press, Nasik (hereafter ‘the Management’) as Examiner. The Works Manager issued a memorandum to him on 10-9-1980 (Ex. C. to the Statement of claim) accompanied by a charge-sheet that he had been found extremely irregular in attendance during the period 7th June, 1979 to August 1980 without prior permission and calling upon him to face a departmental inquiry on that charge. All the proceedings in the inquiry were held under Central Civil Services (Classification, Control and Appeal Rules), 1965. A free translation in Marathi was sent to the Workman. The word memorandum is translated as “NIVEDAN PATRIKA”. The workman gave a reply dated 29-9-1980 explaining that he was ill and that he would start attending to his work as soon as the Medical Officer declared him fit. Thereafter one Kanade, Deputy Control Officer, was appointed as Inquiry Officer by the Disciplinary Authority by a letter dated 25-11-1980. The Workman appeared before Kanade on 3rd December, 1980 accompanied by his legal Assistant, Repote. The Inquiry Officer recorded the statement of the Workman who tried to justify his absence on the ground of his chronic sickness and adverse family circumstances. It appears that the workman gave a written undertaking that he would attend to his work regularly in future and that in case he remained absent in future it would be open to the Management to take any action against him. Thereafter without taking any further steps, the Enquiry Officer submitted a report to the Disciplinary Authority, holding that the charge against the workman was duly proved. The date of this report is in dispute according to the Workman, it is 16th December, 1980, according to the management it is 6th December, 1980. The date of report assumes some significance, because meanwhile a memorandum was issued by the Administrative Officer (not the Inquiry Officer or the Disciplinary Authority) directing the workman to resume work by 16th December, 1980. This letter is dated 8th December, 1980 and it is annexed to the Management’s written statement as Ex. D. The workman did not resume work on 16th December, 1980 or thereafter, alleging that the

Medical Officer had not certified him to be fit to resume duty.

3. To take up the thread further the Works Manager who was the Disciplinary Authority passed an order dated 27th December, 1980, 'discharging' the Workman with immediate effect after recording that he agreed with finding of the Inquiry Officer that the Charge against the Workman was duly proved and after noting that the Workman had failed to honour his undertaking to regularly attend to his work in future. The Workman's appeal to the General Manager was dismissed by an Order dated 21-3-1981, on the ground that the Workman had not shown any improvement, although two opportunities were given to him. The Workman preferred review application to the same authority, who summarily rejected the same on 8-6-1981 for want of power to decide it.

4. The Workman has challenged his removal from service on several grounds as given in his statement of claim. I shall refer only to such of them as have bearing on the validity and propriety of the impugned order. These grounds are summarised below :—

- (i) There is confusion about the date of the chargesheet, because some documents refer to the date as 10-9-1980 (wrongly stated in para 12 of the statement of claim as 9-10-1984) while some others refer to it as 25-10-1980 (again wrongly stated as 25-10-1984 in para 12 of the statement of claim).
- (ii) On 3-12-1980 the Inquiry Officer abandoned the inquiry for good on the assurance of the Workman that he would attend to his work punctually in future. Thereafter he had no power to send any report to the Disciplinary Authority, holding that the charge (of which the Workman had already been exonerated) was duly proved.
- (iii) The Workman had never admitted the charge any time. The Inquiry Officer's finding of guilt is based on no evidence whatever. This has resulted in denial of reasonable opportunity to him to defend himself.
- (iv) The Disciplinary Authority also went wrong in passing the impugned order without furnishing him its copy.

5. The Management deny that the domestic inquiry has been vitiated by any of the flaws as alleged by the Workman.

6. The Workman has filed his affidavit dated 23-4-1988 in support of his case. His learned Advocate further examined him on 15th November, 1980. The Management have restricted his cross-examination only to the question of the validity and propriety of the inquiry. They have not examined any witness of their own. Both sides have filed their written arguments.

7. I do not agree with the Workman's contention that there was any ambiguity about the date of the

chargesheet. A perusal of the papers will bear out that only one chargesheet is involved in the present case, which is styled as 'Nivedan Patrika' and is dated 10-9-1980. The document dated 25-10-1980 which the Workman has tried to dub as another chargesheet is an order passed by the Disciplinary Authority appointing Kanade as the Inquiry Officer. There is no confusion about the chargesheet, as sought to be made out by the Workman. Even he has failed his initial say dated 29-9-1980 to this 'Nivedan Patrika' only, treating it as the chargesheet. The entire proceedings of the inquiry only refer to this charge-sheet. Accordingly I reject this particular contention of the Workman, that there was any confusion in his mind on this count.

8. There is however substance in the Workman's contention that he had not admitted the charge on any occasion and that nearly because he gave assurance to attend to his work punctually in future, it did not amount to an implied admission of the truth of the charge. I have gone through the proceedings of the inquiry dated 3rd December, 1980, the inquiry report, the Workman's initial written statement of defence dated 29-9-1980 and the alleged assurance given by him. The inquiry proceedings as well as the inquiry report make it very clear that the Workman had consistently advanced a strong plea that he was disabled from attending to his work on account of chronic Arthritis, and unfortunate deaths of his Father, Brother-in-law and Son. The Inquiry Officer observes in the proceedings that the Workman had accepted the charge under protest that he had unavoidable family circumstances under which he was compelled to remain absent. In his report the Enquiry Officer states that the Workman had said before him that he was compelled to remain absent from duty due to unforeseen family calamities. The workman had asserted before him that he had been most punctual in the first eight years of his service. In fact, the Inquiry Officer purports to record finding of guilt after disbelieving the Workman's statement. It is clear that the aforesaid statements of the Workman do not amount even to an implied admission of his guilt, much less an express admission. I am aware that the strict concept of confession as construed under the criminal law does not apply for the purposes of a departmental inquiry. But even for the purposes of such inquiry, the statement to be utilised as confession must admit material facts on the basis of which an inference about the guilt of the Workman can be drawn in unambiguous terms. Here the refrain of the Workman has all along been that he had sufficient cause for his absence. We cannot therefore proceed on the basis that the Inquiry Officer was right in law in terminating the inquiry on 3rd December, 1980, and recording a finding of guilt on the so called admissions of the Workman. The Workman's assurance was obviously given in response to the express questions of the Inquiry Officer inviting him to give it. The leading questions find place in the proceedings of the inquiry itself.

9. Even taking the most liberal view for the Management, what the Workman has conceded is that disciplinary action may be taken against him, if he remained

absent in future. That does not imply an admission that his absence from work in the past was without sufficient cause. While I cannot agree with the Workman's contention that he was exonerated of his past alleged misconduct and that the inquiry must be deemed to have been abandoned, I cannot also endorse the Inquiry Officer's abrupt conduct in doing away with recording of evidence and returning a finding of guilt on the basis of the so-called admissions of the Workman. The right course for the Enquiry Officer would have been to record the evidence on behalf of the Management and also of the Workman and then concluded the inquiry in terms of the relevant provisions of the Rules 14(11) to 14(19) of the Central Civil Services (Classification Control and Appeal) Rules, 1965. The omission on the part of the Inquiry Officer to follow this important part of the procedure amounts to denial of reasonable opportunity to the Workman to defend himself. This flaw vitiates the inquiry in its entirety.

10. The Workman's submission that the inquiry report was prepared on 16th December, 1980, and not 6th December 1980 (as claimed by the Management), is not without substance. For this inference, I am relying on the Disciplinary Authority's order dated 27th December, 1980. It mentions the date of the report 16-12-1980 at two places : (a) in item no. 4 of the reference and (b) in the first paragraph of the text. However in view of the finding in para 8 *supra*, nothing material turns on the question whether the correct date is 6th December, 1980 or 16th.

11. There is also substance in the Workman's submission that the impugned order is bad, because admittedly copy of the Inquiry Officer's report was not sent to him by the Disciplinary Authority, with the show cause notice. Unless this report was made available to him, he could not have effectively put up his case before the Disciplinary Authority. I am aware that the Rules do not provide for sending a copy of the report to the charged employee. But it is difficult to appreciate how an employee would be able to challenge the finding of the inquiry, unless he was equipped with the copy of report. This omission will amount to breach of principles of natural justice, resulting in prejudice to the charged employee.

12. The order of removal of the Workman from his service cannot be sustained, because it is vitiating for breach of the principles of natural justice for the reasons adumbrated above. Although in their original written statement, the Management did not ask for liberty to lead evidence before the Tribunal on the charge, they had preferred an application on 19th July, 1990 for amendment of the written statement seeking such liberty. This was done much before the Workman was cross-examined on his affidavit on 30th August, 1990. On 19th July, 1990 I gave a direction that I would pass orders on the application, along with the finding on the preliminary issue. The learned Advocates have not advanced any submissions on this application in their written arguments. I would therefore prefer to pass orders on this application after hearing both of them.

13. My finding is that the impugned order dated 27th December, 1980, removing the Workman from service is bad for the reason that the domestic inquiry is vitiated for breach of the principles of the natural justice. I shall make orders on the Management's application for amendment of their written statement after hearing the learned Advocates of both sides. The matter is fixed for 1st October, 1991 for further progress.

S.N. KHATRI, Presiding Officer

AWARD PART II

Present : Shri Justice S.C. Pandey

Presiding Officer

REFERENCE No. CGIT-20/1987

Parties : Employers in relation to the Management of Currency Note Press
AND
Their Workman

Appearances :

For the Management : Mr. B.M. Masurkar, Adv.

For the Workman : Mr. M.B. Anchan, Adv.

State : Maharashtra

Mumbai, the 21st April, 2003

1. This is a reference made by the Central Government under Section 10(1)(d) read with Section 10(2A) of the Industrial Disputes Act (The Act for short) for adjudicating the following question referred to this tribunal.

"Whether the action of the management of Currency Note Press, Nasik Road, Nasik, in dismissing the services of Shri A.D. Nagre, Ex-Examiner w.e.f. 27-12-1980 is justified? If so, to what relief and from what date, the concerned workman is entitled to?"

2. This Tribunal by Award Part-I dated 18th September 1991 had held that domestic enquiry held by Nasik Currency Press (the employer for short) against Shri A.D. Nagre (its workman for short) was vitiating. The employer was therefore, given an opportunity to justify the order of dismissal dated 27-12-1980. In the aforesaid circumstances, it would not be necessary to state all the allegations made in the pleading of the parties. This tribunal shall exclude from its statement those allegations, which were already considered by this Tribunal for determining if employer had succeeded in justifying the order of dismissal dated 27-12-1980 on the basis of the domestic enquiry.

3. The workman was in employment of the employer in the post of a Examiner. The workman was issued a memorandum dated 10-9-1980 (Annexure C to the Statement of claim) accompanied by a charge sheet requiring him to show cause for his irregular attendance without leave or its sanction between 7th June 1980 to August 1980. It was alleged that workman shall be required to face a departmental enquiry if the reply was not satisfactory. In his reply dated 29-9-1980 the workman had stated that he was unfit to attend to his duties. He shall do

so as soon as the Medical Officer declared him to be fit and attend to the duties. It appears that Employer was not satisfied and ordered a Departmental Enquiry. That enquiry report has already been quashed, and therefore, it is not necessary to mention the fact relating to the enquiry.

4. The tribunal must now concentrate on the allegations made by the employer for proving the charges framed against the workman. The allegations made on behalf of the employer in the written statement (as amended) show that it seeks to assert that the aforesaid charges against the workman was true and this Tribunal had jurisdiction to hold a fresh enquiry. These allegations have been denied on behalf of workman, even before the written statement was filed in paragraph 12, 13 and 14 of the Statement of claim. Even otherwise, it is incumbent upon the employer to prove its case in the denovo enquiry. Therefore, this tribunal proceeds to decide whether the employer has been able to establish the charges framed against the workman. The charge sheet dated 08-9-1980 is being reproduced here.

"He was found to be extremely irregular in attendance during the period from 07-6-1979 to August 1980. He was continuously absent from duty w.e.f. 07-1-1980 to 17-6-1980 and 29-6-1980 to 29-7-1980 without prior permission. He has submitted some medical certificate from ISP Hospital and private Doctor, but these do not cover the entire absence period. On 23-7-1980 a memo was sent to him by W.M. NCNP under Reg. AD to report to Sr. Medical Officer ISP Hospital for Medical but he has not reported for the Medical. Previously, he was charge sheeted two times for irregular attendance but he has not made any improvement in his attendance."

5. In order to prove the aforesaid charges, the employer has chosen to examine the three witnesses before this tribunal. The three witnesses who filed the affidavit are MW1 B.S. Lalchandani, MW2, V.M. Dravid, and MW3 W.B. Kautkar. These three witnesses were cross examined by the workman. It is made clear that the employer had filed affidavit of Ganga Prakash. The employer did not want to rely on his affidavit and evidence and consequently permission was granted to withdraw it as per order sheet dated 18-12-1996. The counsel for the workman had no objection. The workman examined himself in defence against the charges. The case of the employer now hinges upon the testimony of these witnesses and that of Mr. A.D. Nagre.

6. The evidence of the aforesaid three witnesses are being considered now. It appears from the testimony of these witness MW1 Lal Chandani, the workman was given Memo dated 10-9-1980 charging him with his irregular absence from 07-6-1979 to August 1980. The further evidence of this witness is regarding the fact that the charges were proved before the enquiry officer cannot be considered in view of the PART-I Award. The statement in paragraph 4 to 7 has to be ignored. His testimony regarding imposition of punishment on the basis of previous conduct is relevant

only for the purpose of showing that punishment of dismissal was proper. In cross-examination this witness had to admit in the charge sheet did not mention the period for which the workman was absent without medical certificate. It was also admitted by this witness that the workman had submitted medical certificates for showing his sickness for the periods for which he was charge sheeted. He admitted that period of unauthorized absence was not specified. The witness admitted that before framing charge, it was not verified that certificates issued by I.S.P. Hospital were filed. He admitted the certificate of I.S.P. Hospital would be genuine. He did know if any application, for leave was filed by the workmn. He did not know if the workman was entitled to apply for leave as EL, half pay leave, etc. as per his leave record. He admitted that workman could be granted leave without pay. He admitted that he had not placed on record the report of Chief Medical Officer that the workman did not submit himself for medical examination. According to the witnesses, the workman was allowed to join duty because he was reported to be fit by the Doctor. The witness MW2 N.M. Dravid is not a witness examined for proving the charge. The witness stated in his affidavit the procedure for grant of leave. The crux of his affidavit is that attendance of workman is recorded by time keeper. The leave applications and medical certificates are sent to account section for certifying the eligibility. The Account section thereafter shows the eligibility and sends the same to the concerned department for approval. He admitted that the wage bills field along with the affidavit showed that workman was not granted wages for the period he was absent. In cross-examination this witness admitted that he had no personal knowledge about the facts. He agreed that the Chief Control Officer had power to convert absence in to leave. As he had power to sanction leave. He agreed that it was for the Chief Control Officer was to report to the disciplinary authority, if any disciplinary action was to be taken. He agreed that workman was not informed whether he is granted leave or not. The evidence of MW-3 W.B. Kautkar relates to the procedure and the muster rolls mentioned between 1979 to 1980. He stated that Nagre's record Token J69 was correctly recorded. He stated in his affidavit that the copies of muster roll has already been filed. It appears to this tribunal that his witness is referring to document Absent report of Nagre with effect from June 1979 to 1980 because time keepers muster was alleged to be missing. From that record he had inferred that workman was absent from 07-6-1979 to 31-8-1980. His absence was not converted in to leave. The witness admitted in cross-examination that he was not aware about the period of absence of the workman, for which he was charge sheeted. He stated that he was not working in Currency Note till 15-5-1980. He had no occasion to see the leave record of the workman. He was not aware about the leave applications made by the workman. The witness admitted that he was not in a position to say whether the muster roll of the workman was properly maintained by his predecessor.

7. Shri A.D. Nagre in his affidavit stated that his absence was on account of genuine grounds. He had submitted the medical certificates/applications for grant of leave orally. He admitted that he had submitted medical certificates only.

8. In the opinion of this tribunal, the burden of proof to prove the charge before this tribunal was upon the employer. It appears from the charge sheet that (a) the charge of irregular attendance is from 07-6-1979 to 31-12-1979. (b) It is also said that the workman was absent from 07-1-1980 to 17-6-1980 and 29-6-1980 to 29-7-1980 without prior permission. (c) The workman did not report himself to Sr. Medical Officer, India Security Press Hospital, despite the receipt of Memo sent to him under registered post and received by him (d) Previously the workman was charge sheeted for irregular attendance. The last could not be a part of the charge but could be used if the workman was found guilty of absence.

9. Shri T.S. Jayram had filed an application dated 14-1-1997 in compliance with the order dated 18-12-1996. On the same day T.S. Jayram, filed another application dated 14-1-1997 for taking on record a statement prepared from time keepers record on the basis of Time Keepers Muster roll register. The record Annexure A to the application along with the copies annexed to it show that between June 1979 to December 1979, the workman was treated for 14 days on Medical leave on half pay and rest of the leave was treated as leave without pay without medical certificate. It is also noted that for 23 days there was strike in the month of December and the factory was from January 1980 to 29-7-1980 the workman was treated on leave with medical certificate for 50 days and for the rest of the period he was treated on leave without pay without medical certificate. It appears from the aforesaid that workman was granted leave with half pay leave without pay with medical certificate and leave without pay without medical certificate. The payment to the workman appears to have been made on the basis that he was entitled to leave without pay without medical certificate also four days he had not worked. Therefore, the question of framing charge for absence does not arise. His absence was regularized. It appears from the Annexure A that during this period also the workman was granted leave with half pay or without pay with Medical Certificate for 64 days and for rest of days he was treated on leave without pay without medical certificate. It is stated in note the aforesaid document was prepared on the basis of Absence Register which is based on T.K. Muster. It was said that the T.K. Muster is missing. The document is signed by the Administrative Officer Currency. This document is filed by employer himself. There is no reason to hold that this document was incorrectly made. None of the three witnesses who were examined on behalf of employer throw any light on this document. Since this document was filed by the employer and was relied upon it should have been explained by it. It is correct to say that the three witnesses

who were examined by the Employer were cross-examined by the workman. It may be T.S. Jayaraman had filed an affidavit but this affidavit dated 14-1-1997 was filed on 27-3-1997 in support of index of Medical certificate. It was submitted in support of these documents under the direction of this tribunal. Mr. Jayram had filed the affidavit at interlocutory stage. Therefore, it would not be correct to say that this affidavit contradicted the document annexure A attached to the application filed on 27-3-1997 and considered by this tribunal. The workman had right of cross-examination if employer wanted to contradict its own document. It is made clear again that it is document Annexure A to which this tribunal has referred, is styled as Absent Report of Shri A.D. Nagre, Ex Token No. J69 w.e.f June 1979 to December 1980. It is Annexure A to Application dated 14-1-1997 and filed on 27-3-1997. It is not disputed that workman was allowed to join. Therefore, the charge cannot be sustained. The copy of Absence Register indicates that absence was regularized as leave without pay with or without medical certificate. Consequently, the workman could not be charged of absence if employer had treated him on as leave without pay. Thus portion of charges (marked as a and b) is not proved. There is no evidence led on record that workman did not submit himself to medical examination despite the issuance of memo dated 23-7-1980 to get himself examined by the Medical Officer of India Security Press Hospital. In paragraph 15 of his cross-examination B. Lalchandani MW 1 admitted that the report of the Doctor has not been placed on record. It is also not proved that the copy of letter dated 23-7-1980 was ever delivered to the Chief Medical Officer. The workman was also not cross-examined on this point. For all these reasons, it is held that the charge marked as C against the workman is not proved. Thus, it is held that employer has failed to prove charges against the workman.

10. Now the question that arises is what relief should be given to the workman. The enquiry against the workman has been found to be vitiated and now it has been held that the employer unable to prove charges. Consequently, order dated 27-12-1980 whereby the services of the workman is held to be illegal and is hereby set aside and the workman is reinstated. Now so far as the back wages are concerned this tribunal is of the view that 23 years have passed since dismissal of workman. On 20-10-1997 the workman had offered that in case he is reinstated, he shall not claim back wages. This offer could have been accepted by the employer especially, when the domestic enquiry was set aside. Therefore, it would be proper to direct that workman shall be deemed to be reinstated from 27-12-1980. However, he shall be given back wages only from 01-11-1997 to the date of his reinstatement pursuant to this award. For the purpose of calculating back wages for the aforesaid period the employer shall calculate back wages on the basis, as if, the workman was in service and was granted all the increments due to him after 01-11-1997 till he is reinstated. The employer

may also consider if workman is entitled to other consequential benefits as a consequence of his reinstatement from 27-12-1980. There shall be no order as to costs.

11. Accordingly, this tribunal answers the question referred to this tribunal by stating that termination of services of workman is illegal and he is entitled to be reinstated and shall be given the relief by back wages and consequential benefits as indicated in paragraph 10 above.

S.C. PANDEY, Presiding Officer

नई दिल्ली, 9 मई, 2003

का. आ. 1583.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कमांडर वर्क्स इंजीनियर (सब्स) के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण मुम्बई नं. 1 के पर्चाट (संदर्भ संख्या सीजीआईटी-1/1 ऑफ 98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-5-2003 को प्राप्त हुआ था।

[सं. एल-14011/3/97-आई.आर. (डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 9th May, 2003

S.O. 1583.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-1/1 of 98) of the Central Government Industrial Tribunal/Labour Court Mumbai No. 1 now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Commander Works Engineers (Subs) and their workman, which was received by the Central Government on 9-05-2003.

[No. L-14011/3/97-IR (DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 MUMBAI

PRESENT : Shri Justice S.C. Pandey

Presiding Officer

REFERENCE NO. CGIT-01/1998

Parties : Employers in relation to the management of Commander Works Engineer (Subs) Bhandup, Mumbai

AND

Their Workmen

APPEARANCES:

For the Management : Mr. B.M. Masurkar, Advocate

For the Union : Shri Jaiprakash Sawant, Adv.

State : Maharashtra

Mumbai, dated the 23rd day of April, 2003

AWARD

1. This is a reference under Section 10 clause 1(d) read with sub-section 2A of Section (10) of Industrial Disputes Act, 1947. The terms of reference are as follows :—

“Whether the action of the management of Commander Works Engineer (Subs) in not settling the following demands raised by All India MES Kamgar Sangathan is justified? If not, to what relief are the workman/Union entitled to?”

- (1) Returning all the letters of the Union inspite of orders from higher authority by Garrison Engineer (NW) Mankhurd.
- (2) Not taking action till date on incorrect fixation of pay to Mr. Salvi.
- (3) Illegal posting of Mr. Gopal Naidu, Meter Reader Branch Chairman to the Union.
- (4) Non-fixation of pay—Task force employees despite Government orders, 1992.
- (5) Allotment of Key Personnel accommodation against the laid rules.
- (6) Harassment of Union members of issuing letters.
- (7) Illegally removing the notice-board of the Union without intimating to the Union.
- (8) Non-hooding of trade test in time and wrong publication of Seniority List.
- (9) Issuing of promotion to juniors and depriving the seniors already qualified.
- (10) Illegal recovery of House Rent Allowance from the workers of Garrison Engineer (NW), Mankhurd.

2. An application has been filed today on behalf of the Union relating to All India Military Engineering Service, by Shri Jai Prakash Sawant. It has been stated in this application that the employer, Commander, Works Engineering has already granted relief to the demands of the workman. The employer has further promised that some of the remaining demands shall also be resolved amicably. It has been further stated that in view of the assurances given to the union, the workman do not want to prosecute this reference. For the aforesaid, reason stated this reference is disposed of by saying that the dispute between the parties does not survive.

S.C. PANDEY, Presiding Officer

नई दिल्ली, 9 मई, 2003

का. आ. 1584.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्माल इण्डस्ट्रीज सर्विसेज इंस्टिट्यूट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण चाणडीगढ़ के पंचाट (संदर्भ संख्या 171/94) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-5-2003 को प्राप्त हुआ था।

[सं. एल-42012/133/93-आई.आर (डी.यू.)]
कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 9th May, 2003

S.O. 1584.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 171/94) of the Central Government Industrial Tribunal/Labour Court, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Small Industries Services Institute, and their workman, which was received by the Central Government on 9-5-2003.

[No. L-42012/133/93-IR (DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL -
CUM-LABOUR COURT CHANDIGARH
PRESIDING OFFICER : Shri S. M. Goel

Case No. I.D. 171/94

Sh. Tarsen Lal S/o Sh. Thoru Ram R/o H. No. 5,
Roop Nagar, Digiana, Jammu.

...Applicant

Vs.

Deputy Director, Small Industries Service Institute
637-A, Gandhi Nagar Jammu.

...Respondent

APPEARANCES:

For the workman : Shri R. P. Rana

For the management : Shri Pramod Sharma

Dated, the 8th April, 2003

AWARD

Central Govt. Ministry of Labour vide Notification No. L-42012/133/93-I.R. (D.U.) dated 29th November, 1994 has referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of Small Industries Services Institute, Jammu in terminating the services of Shri Tarsen Lal is legal and justified? If not, to what relief the workman is entitled to?”

2. In the claim statement the workman has pleaded that the workman served with the management as a peon

on daily wages for about 7 years and his services were terminated on 12-2-1993 without any order. He was not paid any retrenchment compensation and no notice or notice pay was given to him. No enquiry was conducted. His services were terminated by the UDC who was not the competent authority to do so. He has thus prayed that termination of his services are illegal and he be reinstated in service with full back wages and other benefits.

3. In written statement the management has taken the preliminary objection that the establishment of the management is not Industry under the I. D. Act and provisions of the I.D. Act, 1947 are not applicable on the management as it provides the consultancy to the prospective entrepreneurs in establishing their industrial units and it assists the State Govts. in implementing the Central Govt. policies. It also provides technical guidance to the concerned entrepreneurs. It is admitted that the applicant worked with the management for the last seven years but with breaks. It is further pleaded that the office of the management demanded from the headquarter three posts of Class IV but the headquarter declined. It is thus prayed that the reference is not maintainable and the same deserves dismissal.

4. In evidence, the workman filed his own affidavit as Ex. W1 and documents Ex. W2 to W5. The management filed the affidavit of R.C. Chopra as Ex.M2. The management also relied on Ex. M1 the details of number of days put in by the workman in each year.

5. I have heard the learned counsels for the parties and have gone through the evidence and record of the case.

6. The learned counsel for the management has argued that the establishment of the management is not an ‘industry’ under the I.D. Act, 1947 and thus the provisions of the I.D. Act, 1947 are not applicable to the management. He has further argued that the workman has also not proved on the record that the establishment of the management is an ‘industry’ as it is incumbent upon the workman to prove that the management comes under the provisions of the I. D. Act, 1947. He has also argued that the Hon’ble Central Admn. Tribunal, Calcutta Bench and Patna Bench has categorically held that the management is not an ‘Industry’ and I. D. Act are not applicable to the establishment of the management. The learned counsel for the management also relied on the judgement of the Hon’ble Supreme Court in the case of Bharat Bhawan Trust Vs. Bharat Bhawan Artists Association reported in 2001(3) Labour and Judicial Reports page 464 and further argued that the institute of the management is not engaged in systematic activities. On the other hand, the learned counsel for the workman has argued that the establishment of the management is within the purview of ‘Industry’ in view of the decision of the Hon’ble Supreme Court in the case of Bangalore Water Supply and Sewerage Board.

6. I have gone through the contentions of the learned counsels for the parties and have also pursued the judgements relied on by the parties. The workman in his evidence has not proved that the establishment of the management is an industry. The learned Central Administrative Tribunal also held that the establishment of Small Services Institute is not an industry and the provisions of the I. D. Act are not applicable on the management. Though it is admitted case of the parties that the workman has put in 240 days of service in one calendar year as mentioned in Ex.M1 produced by the management but the functions which the establishment of Small Industries Services Institute is performing are not covered under the definition of industry. Therefore, the provisions of the I. D. Act, 1947 are not applicable on the institute. Thus it is held that the department of Small Industries Services Institute is not an 'Industry' under the I.D.Act, and the present reference is not maintainable.

7. In view of the aforesaid observation, the reference is held to be non-maintainable under the I. D. Act and the same is returned to the Central Govt. accordingly. Appropriate Authority be informed.

Chandigarh.

Dated : 8-4-2003.

S. M. GOEL, Presiding Officer

नई दिल्ली, 9 मई, 2003

का. आ.1585.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्माल इण्डस्ट्रीज़ सर्विस इंस्टिट्यूट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ के पंचाट (संदर्भ संख्या 165/94) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-5-2003 को प्राप्त हुआ था।

[सं० एल-42012/132/93-आई. आर. (डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 9th May, 2003

S. O. 1585.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 165/94) of the Central Government Industrial Tribunal/Labour Court Chandigarh now as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Small Industries Service Institute and their workman, which was received by the Central Government on 9-5-2003.

[No. L-42012/132/93-IR (DU)]

KULDIP RAI VERMA, Desk Officer

138/5/103

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHANDIGARH

PRESIDING OFFICER: Shri S. M. Goel

Case No. I.D. 165/94

Ashok Kumar Son of Gian Chand Village Nihalpur, District Jammu.

... Applicant

Vs.

Director Small Industries Service Jammu,

Deputy Director Small Industries Service Institute
637-A Ghandhi Nagar Jammu.

... Respondents

APPEARANCES :

For the workman : Shri R.P. Rana

for the management : Shri Pramod Sharma

Dated : 8th April, 2003

AWARD

Central Govt. vide No L-42012/132/93-IR(DU) dated 29th of November 1994 has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Small Industries Service Institute, Jammu in terminating the services of Shri Ashok Kumar is legal and justified? If not, to what relief the workman is entitled to?"

2. In the claim statement the workman has pleaded that the workman served with the management as a peon on daily wages for about 7 years and his services were terminated on 12-2-1993 without any order. He was not paid any retrenchment compensation and no notice or notice pay was given to him. No enquiry was conducted. His services were terminated by the UDC who was not the competent authority to do so. He has thus prayed that termination of his services are illegal and he be reinstated in service with full backwages and other benefits.

3. In written statement the management has taken the preliminary objection that the establishment of the management is not Industry under the I. D. Act and provisions of the I.D. Act, 1947 are not applicable on the management as it provides the consultancy to the prospective entrepreneurs in establishing their industrial units and it assists the State Govts. in implementing the Central Govt. policies. It also provides technical guidance to the concerned entrepreneurs. It is admitted that the applicant worked with the management for the last seven years but with breaks. It is further pleaded that the office of the management demanded from the headquarter three posts of Class IV but the headquarter declared. It is thus prayed that the reference is not maintainable and the same deserves dismissal.

4. In evidence, the workman filed his own affidavit as Ex. W1 and documents Ex. W2 to W5. The management

filed the affidavit of R.C. Chopra as Ex.M2. The management also relied on Ex.M1 the details of number of days put in by the workman in each year.

5. I have heard the learned counsels for the parties and have gone through the evidence and record of the case.

6. The learned counsel for the management has argued that the establishment of the management is not an 'industry' under the I.D. Act, 1947 and thus the provisions of the I.D. Act, 1947 are not applicable to the management. He has further argued that the workman has also not proved on the record that the establishment of the management is an 'industry' as it is incumbent upon the workman to prove that the management comes under the provisions of the I.D. Act, 1947. He has also argued that the Hon'ble of Central Admn. Tribunal, Calcutta Bench and Patna Bench has categorically held that the management is not an 'Industry' and I.D. Act are not applicable to the establishment of the management. The learned counsel for the management also relied on the judgement of the Hon'ble Supreme Court in the case of Bharat Bhawan Trust Vs. Bharat Bhawan Artists Association reported in 2001(3) Labour and Judicial Reports page 464 and further argued that the institute of the management is not engaged in systematic activities. On the other hand, the learned counsel for the workman has argued that the establishment of the management is within the purview of 'Industry' in view of the decision of the Hon'ble Supreme Court in the case of Bangalore Water Supply and Sewerage Board.

6. I have gone through the contentions of the learned counsels for the parties and have also pursued the judgements relied on by the parties. The workman in his evidence has not proved that the establishment of the management is an industry. The learned Central Administrative Tribunal also held that the establishment of Small Services Institute is not an industry and the provisions of the I.D. Act, are not applicable on the management. Though it is admitted case of the parties that the workman has put in 240 days of service in one calendar year as mentioned in Ex.M1 produced by the management but the functions which the establishment of Small Industries Services Institute is performing are not covered under the definition of industry. Therefore, the provisions of the I.D. Act, 1947 are not applicable on the institute. Thus it is held that the department of Small Industries Services Institute is not an 'Industry' under the I.D. Act, and the present reference is not maintainable.

7. In view of the aforesaid observation, the reference is held to be non-maintainable under the I.D. Act, and the same is returned to the Central Govt. accordingly. Appropriate Authority be informed.

Chandigarh.

8-4-2003

S.M. GOEL, Presiding Officer

नई दिल्ली, 9 मई, 2003

का. आ. 1586.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जवाहर नवोदय विद्यालय के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ के पंचाट (संदर्भ संख्या 49/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-5-2003 को प्राप्त हुआ था।

[सं. एल-42012/39/92-आई. आर. (डी.यू.)]

कुलदीप राय घर्मा, डैस्क अधिकारी

New Delhi, the 9th May, 2003

S. O. 1586.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref No. 49/93) of the Central Government Industrial Tribunal/ Labour Court Chandigarh now as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Jawahar Navodaya Vidyalaya and their workman, which was received by the Central Government on 9-5-2003.

[No. L-42012/39/92-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM-LABOUR COURT CHANDIGARH

PRESIDING OFFICER: SHRI S. M. GOEL

ID No. 49/93

Sh. Om Parkash S/O Shri Sukh Nandan
C/o Shri Babu Ram, Govt. High School, Malewal,
Distt. Hoshiarpur.

.... Applicant

V/S

Principal, Jawahar Navodaya Vidyalaya, Pojewal,
Distt. Hoshiarpur(Pb.) 144524.

.... Respondents

REPRESENTATIVE

For the workman: Mrs. Anita Ahuja

For the management: Shri Rakesh Kaundal

AWARD

The Central Govt. Ministry of Labour vide Notification No. L-42012/39/92-I.R.(D.U.) dated 22nd March, 1993 has referred the following dispute to this Tribunal for adjudication:

"Whether the action of the Principal, Jawahar Navodaya Vidyalay, Pojewal, Hoshiarpur in terminating the services of Shri Om Parkash, S/o Shri Sukh Nandan w.e.f. 1-7-91 is justified? If not, what relief the concerned workman is entitled to and from what date?"

2. It is pleaded in the claim statement that Om Parkash workman was engaged as a daily wage peon on 15-3-1988 and worked there continuously till 1-7-1991. Workman applied for leave from 1-7-1991 to 14-7-1991 on account of some personal work which was orally allowed by the Principal but after his return on 15-7-1991 he was not allowed to resume duty by the Principal and he has completed more than 240 days of service continuously in one calender year. It is further pleaded by the workman that at the time of termination of his service the provisions of Section 25-F of the I.D. Act were not complied with as he was not given any notice, retrenchment compensation etc. It is also pleaded that the workman was not called for interview when Shri Gurmel Kataria was offered the work of peon. Thus the management has also contravened the provisions of Section 25-F. The workman has thus prayed that he be reinstated in service with full back wages and other benefits.

3. In the written statement the management has taken preliminary objection that the department of the Navodaya Vidyalaya Samiti is not an 'Industry' and, therefore, the provisions of the I.D. Act, 1947 are not applicable on the establishment of the management. On merits it is pleaded that the workman was not appointed with the Navodaya Vidyalaya Samiti rather he worked for some time as a helper in the mess which is run on the Cooperative basis by the Students of the school. Therefore, there is no relationship of employee and employer between the applicant and the management. It is further pleaded that the applicant even did not work for 40 days in a year with the management and the claim of the applicant is totally misconceived and the management prayed for the rejection of the reference.

4. Replication was also filed by the applicant reiterating the claim made in the claim statement.

5. In evidence the applicant filed his own affidavit Ex. W1 and certificate Ex. W2. In rebuttal the management produced the affidavit of Shri B.C. Gupta who appeared in cross examination as MWI

6. I have heard the learned counsels for the parties and have gone through the written arguments submitted by both the parties.

7. It is submitted in the written arguments on behalf of the workman that the applicant worked with the management continuously from 15-3-1988 till 1-7-1991 and after availing of the leave he was not allowed to join duty on 15-7-1991 by the Principal and it amounts to termination and he has already rendered more than 240 days of service in one calender year and the management has not complied with the mandatory provisions of Section 25-F of the I.D. Act, 1947 and the workman is entitled to be reinstated in service with all benefits. The workman has also relied on Ex. W2 the certificate issued by the Principal on 11-4-1990. It is also pleaded in the written arguments that the establishment of the management is Industry as it is

covered by the judgement of the Hob'ble Supreme Court in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa AIR 1978 A.C. 548.

8. On the other hand the management in its written statement has pleaded that the workman was engaged in the mess of the students on daily wage basis and he was paid out of the funds meant for students' mess. It is submitted further that during June 1991 the workman abandoned the job without the knowledge of the school authorities and he was never appointed on a sanctioned post. No appointment letter was issued to him. He has also not completed 240 days in a calender year with the management. It is further submitted that the experience certificate is fake as the person who issued the certificate has not been produced by the workman. It is also submitted that no post of mali is sanctioned with the management and therefore, he can not be appointed as peon or mali and thus the workman is not entitled for any regularisation on the post.

9. I have gone through the rival contentions of the parties and also persued the evidence and record of the case. The date of alleged termination of the workman is 1-7-1991. It is argued on behalf of the management that the workman has not completed 240 days of service in one calender year. The workman has produced certificate Ex. W2 which was dated 11th of April 1990. It is the case of the management that the workman has not put in 240 days of service in one calander year. The workman has not produce any record to show that up to the alleged date of termination i.e. 1-7-1991, for how many days in a calander year the workman worked. It is the primary duty of the workman to prove first that he has put in 240 days of service in a calander year to claim the benefit u/s 25-F of the I.D. Act, 1947. The certificate issued on 11-4-1990 is of no help to the workman as it was issued in April 1990 and the alleged date of termination is 1-7-1991. Even though this certificate was denied by the management and it is pleaded that it is fake. But even if for the sake of arguments this is taken to be true, the same can not be taken into consideration as it is not related to the relevant period. No details of working days has been produced by the workman during the period from July 1990 to 1-7-1991 which could prove his case that he has put in 240 days of service in a calander year and in absence of that he can not claim the benefit of Section 25-F of the I.D. Act, 1947, therefore, no case is made out to grant relief to the workman in the present reference.

10. In view of the discussion in the earlier paras, the action of the management in terminating the services of Shri Om Parkash son of Sukh Nandan w.e.f. 1-7-1991 is fully justified and the workman is not entitled to any relief. The reference is answered accordingly. Central Govt. be informed.

Chandigarh.

S.M. GOEL, Presiding Officer

नई दिल्ली, 13 मई, 2003

का. आ. 1587.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, भारतीय जीवन बीमा निगम के प्रबंधनत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण कोलम के पंचाट (संदर्भ संख्या 35/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-4-2003 को प्राप्त हुआ था।

[सं. एल-17012/31/91-आई.आर. (बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 13th May, 2003

S.O. 1587.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 35/97) of the Industrial Tribunal Kollam as shown in the annexure in the Industrial Dispute between the employers in relation to the management of LIC of India and their workman, which was received by the Central Government on 16-4-2003.

[No. L-17012/31/91-IR (B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL,
KOLLAM

(Dated, this the 17th day of October, 2000)

PRESENT:

SRI. P.V. ABRAHAM

INDUSTRIAL TRIBUNAL

IN

INDUSTRIAL DISPUTE NO. 35/97

Between

The Senior Divisional Manager,
Life Insurance Corporation of India, Management
Divisional Office,
Pattam, Trivandrum.

(By Sri R.S. Kalkkura, Advocate, Trivandrum)

And

Sri B. Sreedharan Pillai,
General Secretary,
Insurance Employees Union, Pattam, Workman
Trivandrum.

(By Sri. M.S. Vijayachandra Babu, Advocate,
Trivandrum)

AWARD

The Government of India, as per Order No. L-17012/31/91-IR B-II, dated, 28-10-1991 referred this industrial dispute for adjudication to this Tribunal.

The issue referred for adjudication is the following :

"Whether the proposal of the management of Life Insurance Corporation of India to re-fix the salary of Sri. K.R.R. Nair, Assistant as well as to withdraw the graduation increment granted to him is legal and justifiable ? If not, to what relief the workman is entitled to ?"

2. The union has contended that Sri K.R.R. Nair, was a sergeant in the Air Force and he was discharged from the Air Force office on 31-8-1985. Afterwards he was appointed as an Asst. in the Life Insurance Corporation of India on 16-10-1989. As per regulation No. 57 contained in Chapter-IV of the staff Regulation of the Life Insurance Corporation, the workman was entitled for two increments on confirmation. Accordingly he was granted graduation allowance w.e.f. 16-1-1990 Chapter-IV of the staff regulation also contained provision for re-fixation of his pay and allowances due as per schedule (1) of the said regulations. As per that re-fixation of his salary was made by the branch office and the arrears were paid to him. Subsequently the branch manager initiated action to recover the graduation increment as per letter dated 11-1-1991. Steps were also taken for a fresh re-fixation of his salary on the basis of the decision rendered by the Hon'ble Supreme Court of India in Udayasanker's case. According to the union the salary of Sri. K.R.R Nair was fixed as per paras 37 and 38 of the circular dated 2-6-1989 issued by the management. The management had issued the circular dated 2-6-1989 on the basis of the order No. F. 105 (10.INS/IV/80) dated 9-5-1988 issued by the Ministry of Finance, Government of India. Even though the order issued by the Government of India does not provide for any restriction with respect to the fixation of salary of the Ex-servicemen who were appointed in the Life Insurance Corporation of India after 1-1-1988, the circular dated 2-6-1989 issued by the Life Insurance Corporation has incorporation restriction providing that the fitment of Ex-service men appointed on or after 1-1-1988 shall be as per formula given in para 31 of that circular. According to the union the Hon'ble Supreme Court in the decision reported in AIR, 96 Supreme Court 1901 (O.K. Udayasankara & others V. Union of India & Others) had not considered or examined the Government order dated 9-5-1988 based on which the circular dated 2-6-1989 was issued by the Life Insurance Corporation and if that Government order was also considered the Hon'ble Supreme Court would have found that the fixation of the workmen would have been made as per paras 37 and 38 of the circular dated 2-6-1989 issued by the Life Insurance Corporation of India. In the circumstances the union contends that the fixation of salary of Sri. K.R. Raveendran Nair was properly made and the steps taken by the management to re-fix his salary is liable to be set aside.

3. The management contends that Sri K.R. Raveendran Nair was appointed as an Assistant in the Life Insurance Corporation of India at the minimum scale of pay on

16-10-1989. He was an Ex. servicemen. Based on the circular dated 2-6-1989 issued by the Life Insurance Corporation of India, the Ex- servicemen re-employed in the Life Insurance Corporation of India were given the option either to continue in the scale of pay as per the existing provisions or for a higher starting salary and the workman had opted for a higher starting salary. Accordingly the salary of the workman was fixed as per paras 37 and 38 of the circular dated 2-6-1989. The fixation of salary of the workman was due to an inadvertant mistake. The salary of the workman should have been fixed as per para 31 of the circular dated 2-6-1989. Therefore there was need to correct the mistake and to re-fix his salary. Clauses 37 and 38 of the circular dated 2-6-1989 are not applicable in the case of fixation of salary of Ex-servicemen appointed after 1-1-1988 and clause 31 of that circular is applicable in their case. The management has further contended that some of the Ex-servicemen who were appointed under the management subsequent to 1-1-1989 had filed OP. No. 933/91 challenging the fixation of their salary and the said original petition was dismissed holding that the earlier fixation was made on wrong understanding and it was to be corrected. Even though the above mentioned employees had filed writ appeal No. 451/91 the same was dismissed as per judgment dated 3-6-1991. They had also filed a special leave petition before the Hon'ble Supreme Court. However the Hon'ble Supreme Court had dismissed the special leave petition and upheld the decision of the High Court. According to the management, the issue with respect to the fixation of salary of the workman and the issue raised before the Hon'ble Supreme Court in O.K Udayasanker's case was one and the same and that was finally decided by the Hon'ble Supreme Court, and in the circumstances the workman is not eligible for any relief.

4. The appellants in the decision of the Supreme Court reported in (AIR 1996 Supreme Court 1901) O.K Udayasankaran and Others v. Union of India and Others) were Ex-servicemen who were re-employed by the Life Insurance Corporation of India after their discharged from military service. In their case there was a gap of more than three years between their discharge from military service and their appointment in the Life Insurance Corporation of India. The dispute raised in that case was with respect to the fixation of salary of those Ex-servicemen on their re-employment in the Life Insurance Corporation of India. The appellant's in that case were appointed in the Life Insurance Corporation of India after 1-1-1988. The Hon'ble Supreme Court had elaborately considered the question with respect to the fixation of their salary and held as follows :

9. "A perusal of para 3.8 and para 4 clearly brings out the fact that the fitment under para. 3.8 has to be done only in the case of Ex-servicemen who were employed prior to 1-1-1988. Para 3.8 itself clearly provides that the benefit will be

given to an existing Ex-serviceman. The existing Ex-serviceman, though employed prior to 1988 will get actual benefit only from 1-1-1988 and not for any date prior thereto. Such a provision would not have been required had this concept of notional fitment under para 3.8 not been made applicable only to existing Ex-servicemen. Para 4 also says that the incremental difference will be added to the individual's basic pay as on 1-1-1988 and arrears will be released accordingly. The entire scheme of para 3.8 and para 4, therefore, deals with existing Ex-servicemen or ex-servicemen who had been employed prior to 1-1-1988. The examples which have been annexed to para 3.8 are also all examples of Ex-servicemen who joined Life Insurance Corporation prior to 1-1-1988, thus clearly bringing out the intention to cover under para 3.8 existing Ex-servicemen who had been in the employment of Life Insurance Corporation prior to 1-1-1988. The example which is appended to para 4 also deals with a case of an ex-serviceman employed long prior to 1-1-1988.

10. Para.5 makes this position amply clear by pointing out that Ex-servicemen who are appointed after 1-1-1988 shall be fitted as per formula given in para 3.1 above either from 1-1-1988 or the date of appointment whichever is later, para 7 again clarifies this position by saying that the fitment of salary of all Ex-servicemen appointed in the industry henceforth shall be governed by these instructions. The use of the past tense in referring to the employment of Ex-servicemen by Life Insurance Corporation in paras 3.7 and 3.8 is also indicative of the fact that it refers to Ex-servicemen who were employed in the Life Insurance Corporation prior to the coming into force of the new scheme.
11. The reason for giving the benefit of para 3.8 to Ex-servicemen who were employed by the Life Insurance Corporation prior to 1-1-1988 is referred to in the counter-affidavit filed on behalf of respondents 1 and 2 in the writ petition as also in the affidavit filed on behalf of the respondents in the appeal. Normally, whenever a person is remployed in Government service or public service, when the process of fixation of his pay is undertaken, the component of pension which is received by the employee from his earlier employer is always deducted and adjusted in the salary which he gets on re-employment. This was being done in the case of ex-servicemen re-

employed by Life Insurance Corporation prior to the coming into operation of the new scheme. The Life Insurance Corporation decided to treat its ex-servicemen employees more liberally by providing under the new scheme in para 3.6 that the component of pension will not be considered for pay fixation. The appellants herein as also all ex-servicemen who have been employed after 1-1-1988 have thus been allowed to retain their pension from Defence services. The pay which they are getting in Life Insurance Corporation on the basis of the formula fixed under para 3.1 is in addition to the pension which they are getting. The benefit, however, was apparently not available to existing re-employed ex-servicemen prior to 1-1-1988. As result of negotiations which took place between the Life Insurance Corporation and employees. It was decided to compensate the existing re-employed ex-servicemen who had lost the benefit of service in Life Insurance Corporation for a period exceeding three years after their discharge by giving them a notional fitment in the Life Insurance Corporation's pay scales in the manner in para 3.8. There was no question of giving such a benefit to ex-servicemen employed after 1-1-1988.

12. Dr. Dhavan, learned counsel appearing for the ex-servicemen has emphasised the fact that as option-cum-consent letter under para 6 also taken from ex-servicemen employed after 1-1-1988. This is disputed by the respondents. However, para 6 itself quite clearly provides that the option-cum-consent letter has to be obtained from each existing ex-serviceman employee opting fitment of salary as per those instructions. It is, therefore quite clear that the option is to be exercised only by existing ex-servicemen employees of Life Insurance Corporation, thus re-inforcing the contention of the respondents that fitment as per para 3.8 is not available to ex-servicemen re-employed in Life Insurance Corporation after 1-1-1988. The respondents have admitted their mistake in asking for such consent letter if they have done so. They have also admitted that they made a mistake in granting to the three appellants before us the benefit of para 3.8 although they were engaged after 1-1-1988. They have sought to correct this mistake by their letter of 16-1-1991 by recalculating their salary from 1991. They are entitled to reduce the pay of the appellants on the basis of the correct fitment to be given to the appellants in

the light of the instructions of 2nd of June, 1989. The High Court was, therefore, right in rejecting the contentions of the appellants. The High Court has also directed that for recovery of excess amount so paid reasonable instalments should be given to the appellants so that undue hardship is not caused to them."

5. Admittedly the workman was appointed after 1-1-1988. The facts of the decision cited above and the facts of this industrial dispute are identical. As in the case of the appellants in the decision cited above, the workman was in this industrial dispute also an ex-serviceman who was re-employed by the Life Insurance Corporation of India after his discharge from the military service and there is a gap of more than three years between his discharge from the military service and his appointment in the Life Insurance Corporation of India. Therefore the case of the workman in this industrial dispute is squarely covered by the decision of the Supreme Court cited above. Even though the workman had raised a contention that if the Hon'ble Supreme Court had examined order dated 9-5-1988 issued by the Government of India, Ministry of Finance, the Hon'ble Supreme Court would have decided in his favour, it is not possible to accept the same. The Hon'ble Supreme Court had very elaborately considered the question with respect to the fixation of salary of the ex-servicemen who were re-employed under the Life Insurance Corporation of India after 1-1-1988 and came to the conclusion that the fixation has to be made as per para 31 of the instructions dated 2-6-1989 and not as per 37 and 38 of that instructions. In the circumstances the steps taken by the management to correct the mistake made by them and to refix the salary of Sri K.R. Raveendran Nair is legal and justifiable.

6. In the argument notes submitted by the union it has been stated that the issue with respect to the graduation increment was settled during 1993. In the circumstances the issue with respect to the graduation increment is no more a live issue.

7. In the decision cited above the Hon'ble Supreme Court has directed the management to recover the excess amount in reasonable instalments from the appellants in that case. Therefore the workman in this case is also eligible for the same facility. Therefore the management is directed to make the recovery of the excess amount paid to the workman consequent on re-fixation of his salary in easy instalments.

8. In the result an award is passed holding that the workman will not be eligible for any relief except that the recovery of the excess amount paid to him shall be made in easy and reasonable instalments.

P. V. ABRAHAM, Industrial Tribunal